App. F. IX-4

8-126

Previous References. (1924.-5- I.T.)

File No. 137-24

Serial Nos.

Later References.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos.

Part B for

SUBJECT.

Amendment of the Income Tax Regulations as regard the Government about deposits

G. R. S. 111—3]

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

2/12 1) Letter no. 4048 dt. 12.25 from the Govt. Advocate forwarding a copy of the order of reference to the Full Bench in the I.T. case relating to the assessment of the income of the Central India Spinning, Weaving & ... Company, Ltd, Bombay in ... tax for the year 1923-24.

Subd. for information

KV 9/12

B 13/12

5465 14/12 3) 2nd memo

Ref 14/12

N. B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

01264—GPB—40,000—17-12-

Serial No.

Amendment of the Income-Tax Regulation as regards the provisions about Super-tax.

.....

In the references made by the Commissione of Income-tax to the Chief Court about the assessability to super-tax of the incomes of certain companies doing business both in Mysor and British India the Full Bench has held that

(i) Under Section 56 of the Income-tax Regulation, the "Total Income" for purposes of Super Tax is the same as that for Income-tax.

(ii) Under the combined operation of Sections 2(15), 10(4) and 16(1) of the Regulation "Total Income" in the case of companies doing business in Mysore and British India is the total of the incomes of the assessee in Mysore as well as in British India and

(iii) Although the charging section , Sec 55 for purposes of super tax and schedule II wo permit the levy of super tax on the total incom of the business both in British India and Mysor in excess of Rs.50,000, still the non-exclusion of Section 10(4) in Section 58(1) or in other words the non-exclusion of the operation of Section 10(4) in relation to the assessability charge; &c., of super tax calls for the exclusio of the whole of the British India Income from such excess in computing the actual income liabl for the levy of super tax in Mysore.

The effect of the interpretation of the Re gulation by the Chief Court as above is that i the case of companies doing business in Mysor and in British India, super tax will become n

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payable in Mysore only when the Mysore portion of the Income is in excess of Rs.50,000 and the tax will be leviable only on such excess; in other words, from the Total Income the amount earned in British India must first be deducted and if the balance i.e., the Mysore Income, exceeds Rs.50,000 then the excess is the amount and the only amount chargeable to Mysore Super-tax. Thus under the law as now interpreted so long as the Mysore Income is not more than Rs.50,000 no super tax is leviable in Mysore whatever the "Total Income may be.

In the light of the above observations the position of the assessees, the Government of India and the Government of Mysore as regards the collection of super tax may be considered. There is no(?) difficulty so far as companies &c., carrying on business in either of the places or are concerned. The scope of the present enquiry has therefore to be confined to assessees doing business both in Mysore and British India earning income in both the places. In regard to these assessees, the Government of India and the Government of Mysore have entered into mutual negotiations to prevent double taxation. The Government of Mysore have *provided in the Regulation itself by enacting* section 10(4) that in computing the profits or gains of a business a deduction shall be allowed of the amount of profits or gains appearing to the assessing officer to be due to the transactions in British India that tax is and can be collected in Mysore only in respect of Mysore Income. The Government of

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India on the other hand provided by an executive order that a deduction shall be made from the Indian Income-tax payable on the profits of such business of the amount of Mysore Income tax that would be payable on such portion as appears to the Income-tax officer in British India to be due to transactions in Mysore. The Government of India therefore levy in the first instance tax on the whole income and practically refund the tax that the assessee may pay in Mysore on the Mysore portion of the income. Where no tax will be collected in Mysore on the Mysore income, the Government of India retains the tax it has levied on such incom also and even if the income derived in Mysore be held to be subject to Mysore tax, the Government of India stands to gain to the extent of the difference in rate even as regards the Mysore portion of the income should the rate of Mysore tax be lower than the British Indian tax. Thus in the absence of a statutory bar similar to section 10(4) in the British Indian enactment, the Government of India can always levy super tax on the income of an assessee (so long as the combined income in both the places exceeds Rs.50,000) on such excess while Mysore can claim a tax only on the excess of the Mysore income over Rs.50,000. The Government of India is therefore in an advantageous position in that it takes credit for Mysore income also for levying the tax and this advantage is solely due to the fact that Section 10(4) of the Regulation has no place in the Indian Act and even where Mysore Govt. levies

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a tax by reason of the Company's income in Myso being in excess of Rs.50,000, the Government of India gets the benefit of difference in rate if any.

It is also possible to conceive of cases where the assessees escape liability to taxation under the present state of law, for exampl suppose an assessee is in receipt of an income of Rs.49,999 in each of the places and the Mysore portion of the income arises or accrues Mysore and is retained in Mysore. In such case no super tax can be levied in Mysore as the Mysore income is less than Rs.50,000 and no ta can be levied in British India either as acco ing to the law as interpreted in British India and as repeatedly urged by the Government of India, the Mysore income which accrues or arises in Mysore and is not received in British India cannot come within the operation of income-tax Act and cannot therefore be taken into account for calculating "Total Income" so that the "Total Income" for the purposes of the British Indian Act will be Rs.49,999 only and no super tax can be levied on it. Under similar circumstances even if the income in each place exceed Rs.50,000, the assessee will get a deduction at each place of Rs.50,000 so that no super tax would be collected on one lakh of rupees.

From the foregoing it is clear that under the present state of law Mysore is in an anamolous position and in some cases the assessees also stand to gain. Justice Mr. D.K.Rama Rao has shown in his judgment that even under the

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the existing law, super-tax can be collected from assessees in receipt of a total income of over Rs.50,000 though the Mysore income may be less than Rs.50,000. But in view of the opinions held by the other judges it is desirable that the Regulation should be amended so as to make it clear and secure to the Mysore Government the tax legitimately due to it.

One amendment that suggests itself on a perusal of the judgments is that in the assessment, charge and collection of super tax (Vide Section 58(1)) the provisions contained in Section 10(4) may be excluded, in other words section 10(4) may be included as one of the excepted sections under Section 58(1). It would therefore suffice if section 58(1) is amended on these lines.

25 6 26.

Bill further to amend the Mysore Income tax Regulation, 1923.

.....

Whereas it is expedient to further amend the Mysore Income-tax Regulation, 1923, it is hereby enacted as follows:--

Amendment of Section 58.

In clause (1) of Section 58, after the words "Section 8" add "sub. section (4) of Section 10,"

Extract from THE ACCOUNTANT - TAX SUPPLEMENT.

5th March 1927. - page 130.

Income-tax in Spain.

"A foreign Resident in Spain" recently wrote to the TIMES as follows:-

"The provisions of the new Spanish law published in the Madrid Gazette of 18th December last as a projected law imposing an income-tax in Spain will very seriously affect the many British subjects who are now resident in Spain, whether for reasons of health, pleasure or employment. Clause 1 declares that the tax is to apply equally to all 'residents' whether of Spanish or Foreign nationality, and a 'resident' is defined as any person whose stay (permanencia) in Spain extends for one year. All such persons are to make declarations, under drastic penalties, not merely of such part of their income as they earn in Spain or derive from Spanish sources, together with any part of their income from foreign sources which they may cause to be remitted to and expend in Spain, but of the whole amount of their income from all sources whatever, whether Spanish or foreign, irrespective of whether it is received in Spain or not and to pay income-tax thereon as a progressive scale."

"Such a provision goes far beyond the English Income-tax law or that of any other country so far as foreign residents are concerned, and as the matter very seriously affects many British subjects who may be contemplating taking up employment in Spain, or residing in that country for any other reason, and will, in effect, render it impossible for any foreigner to reside in the country except for a period of less than twelve months, it seems to me that the fullest publicity should be given to the proposals of the Spanish Government".

3rd February. A British Resident in Spain.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Thursday, the 5th day of November 1925.

PRESENT

Mr. Justice C. S. Doraswami Iyer,

and

Mr. Justice D. K. Rama Rao.

Civil Referred Case No. 9 of 1924-25.

In the matter of a reference under Section 66 (2) of the Mysore Income-tax Regulation, V of 1923, by the Commissioner of Income-tax in Mysore (received with his No. C. 669 of 1924-25, dated 13th June 1925), submitting for the decision of this Court a statement of the case relating to the assessment of the income of the Central India Spinning, Weaving and Manufacturing Company, Ltd., Bombay, to super tax for the year 1923-24.

Heard.—Mr. L. A. Govindaraghava Iyer for the assessee Company.
Mr. K. Sankaranarayana Rao, Government Advocate, for Government.

ORDER.

Mr. Justice C. S. Doraswami Iyer.—This is a case of reference under Section 66 (2) of the Mysore Income-tax Regulation, V of 1923, in the matter of the assessment of the Central India Spinning, Weaving and Manufacturing Company, Ltd., Bombay, to super tax for the year 1923-24.

2. The Company in question having its registered office in Bombay, carries on business partly in British India and partly in Mysore. The Commissioner for Income-tax has held that the Company is liable to pay both income-tax and super tax on the income accrued in Mysore, which he assessed at Rs. 24,699. The Company has accepted, the assessment for income-tax but has demurred to its liability to assessment for super tax, on the ground that the taxable income from its business in the State is less than Rs. 50,000. On the application of the assessee the Commissioner has made this reference raising the following questions for decision:—

(*a*) Whether the effect of Section 58 (1) of the Mysore Income-tax Regulation, V of 1923 is to make Section 10 (4) applicable to the charging of super tax without any qualification?

(*b*) If the above question is answered in the affirmative, what is the cumulative effect of Sections 55, 56 and 58 (1) of the Regulation, and is it such as to require the successive deduction from the total income [as defined in Section 16 (1)] of the statutory allowance of Rs. 50,000 and of the British Indian income?

(*c*) Whether only the amount left over after the above deduction is assessable to super tax?

(*d*) What is the effect of the words "save as hereinafter provided" in Section 4 (1), and of "so far as may be" in Section 58 (1), and do they permit of the interpretation put by me on Sections 16 (1) and 55, 56 and 58 in the decision now objected to by the petitioners?

3. For a proper understanding of the questions raised we have to consider the provisions of the Regulation bearing on the subject of assessment, not only to super tax but to income-tax also. Under Sections 3 and 4, income-tax has to be charged at the rate or rates specified in Schedule I, in accordance with and subject to the provisions of the Regulation on all income, profits or gains as prescribed or comprised in Section 6, accruing or arising or received in Mysore, or deemed under the provisions of the Regulation to accrue, arise or to be received in Mysore. Section 6

enumerates the heads of income so chargeable and Sections 7 to 12 describe the manner in which the charge is to be made in the case of each of these heads, subject to the allowances and deductions specified thereunder. Then follow exemptions of a general nature (Section 14) and special exemptions in respect of Life Insurance premia, and other payments of similar kind (Section 15). The income computed in accordance with the provisions of the above sections forms the basis of taxation and is generally known as taxable income, *i.e.*, income chargeable to income-tax.

4. This taxable income is, however, different from the total income within the meaning of Section 2 (15), which is to be computed in the manner laid down in Section 16 in order to determine the liability of a person to taxation (*i.e.* whether his total income amounts to a minimum of Rs. 2,400) and the rate at which the tax is to be charged under Schedule I. In such total income is to be included among other deductions, any sum representing the profits or gains in British India of a business carried on both in British India and Mysore, which under Section 10 (4) is not chargeable to income-tax in Mysore, that is to say, while the said sum is not actually subject to income-tax here, it has to be included for the purpose of determining liability to such tax, and the rate to be charged on the taxable income.

5. This distinction between the taxable income and the total income has to be borne in mind in construing the provisions of Regulation, V of 1923, in this reference, in their application to super tax. Under Section 55, super tax is payable on the total income of the previous year at the rates laid down in Schedule II. Under Section 56, the total income for purposes of super tax shall, subject to the provisions of Chapter IX, be the total income as assessed for purposes of income-tax. The result appears to be that while the total income computed for income-tax is to be regarded as the total income for super tax purposes, the actual income liable to super tax is under Section 58 to be determined in accordance with the provisions of the Regulation, excepting those contained in the provisos, sub-sections and sections mentioned in Section 58 (1). Among those excepted provisions is not included Sub-Section (4) of Section 10, and the provisions of this sub-section have therefore to be taken into account in computing the amount liable to super tax under our Regulation. As the sub-section allows deduction of profits or gains accruing on transactions in British India in respect of a business carried on there as well as in Mysore, super tax is assessable only on the actual income derived by the business in Mysore, though the liability to such tax is dependent on the total income of the business derived both in British India and in Mysore as computed in the manner aforesaid. If such total income exceeds Rs. 50,000 super tax is leviable on such excess income, as per Schedule II read with Section 55, reduced by the amount representing the profits or gains of the portion of the business carried on in British India in conformity with the provisions of Section 58 (1), as explained above. Such a construction is consistent with the provisions of Section 4 (2) and Section 42 (1), and the reciprocal arrangement made between the Government of India and the Government of Mysore for affording relief from double income-tax, in the case of assessees carrying on business both in British India and in the Mysore State. Section 4 (2) applies to profits or gains accruing or arising without Mysore to a person residing within, and Section 42 (1) to profits or gains accruing or arising through or from any business connection in Mysore to a person residing without. In either case such profits or gains are to be deemed as accruing or arising in Mysore, and are chargeable to income-tax here. The reciprocal arrangement referred to above is given effect to in Mysore by the provision contained in Section 10 (4) of the Regulation and in British India by special instructions of the Government of India conveyed in their letter of the Financial Department, No. 2134, dated 4th June 19. 4, embodied in paragraph 14, p. 86 of the Mysore Income-tax Manual. The terms of this arrangement so embodied coupled with the absence of any specific provision in the returns prescribed under Section 22 of the Regulation for showing the deductions of earnings in British India, of a business carried on partly there and partly here would seem to lend colour to the contention that Section 10 (4) was not intended to apply to residents in British India carrying on such business.

6. Mr. L. A. Govindaraghava Iyer who argued the case with much ability and clearness, goes one step further, and urges that Section 10 (4) was designed

merely for ascertaining the income of a business in Mysore carried on partly here and partly in British India, by the simple process of excluding the amount of profits or gains appearing to the assessing officer to be due to transactions in British India. Such a construction, he points out, will be in accord with Sections 3 and 4 of the Regulation, under which according to the decision, cited in Ali Imam *vs.* Income-tax Commissioner [(85 Indian Cases 164) (Patna)], and relied on by the learned advocate, the income earned outside the taxing State shall not be chargeable in that State unless (1) it is received within that State, or is deemed to accrue or arise or to be received therein or (2) unless it constitutes the profits or gains of a business actually received in that State within the meaning of Section 4 (2). As, in the present case, the profits or gains of the assessee, in so far as they relate to the transactions in British India could not be deemed to have accrued or arisen in Mysore, nor received there, he urges, that they could not be taken into account in computing the total income for assessment purposes in Mysore. Whatever may be the force of this line of argument in its application to the provisions of the British Indian Income-tax Act, it cannot prevail here in view of the express provisions of Section 16 (1) of the Mysore Income-tax Regulation, V of 1923, wherein it is expressly stated that in the case of profits or gains in British India of a business carried on both there and in Mysore, the deduction admissible under Section 10 (4), in respect of the earnings in British India, shall be included for computing the total income in Mysore. It may be observed that although in Section 9 (3) of the previous Regulation of 1920, there was a provision identical in terms with that of Section 10 (4) of the present Regulation, there was not in the computing section (Section 13) of that Regulation, as there is in Section 16 (1) of the present Regulation, any provision for including the deduction aforesaid, for determining the total income. This change in the language of the present Regulation, to be construed as connoting a change of intention on the part of the legislature in this respect. In construing a taxing statue the court has to give effect to the intention of the Legislature as gathered from the language employed, having regard to the context. It is not open to the court "to narrow or whittle down the operation of the Act by considerations of hardship, business convenience or the like" See Attorney General *vs.* Carlton Bank (1899), 2 King's Bench, 158, page 164. I have therefore to hold that as the Regulation stands at present, the profits or gains earned in British India by a business partly carried on there, and partly here, should be included for ascertaining the total income of an assessee in Mysore.

7. At the same time in construing and applying fiscal statutes, the observations of Lord Cairns in the leading case of Partington *vs.* Attorney General (1869) L.R. 4 H.L. 100 have to be borne in mind, *viz.*:—

"As I understand the principle of all fiscal legislation, it is this. If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be.. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute where you should simply adhere to the words of the statute."

This principle was emphasized, in a later case, by Lord Blackburn in Coltness Iron Co. *vs.* Black (1881) 6 A. C. 315, in the following words:—

"No tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden on him. But when that intention is sufficiently shown, it is not open to speculate on what would be the fairest and most equitable mode of leving that tax."

There are also several English and Indian decisions to the same effect. For instance in Killing Valley Tea Co. *vs.* Secretary of State for India (48 Calcutta 157) it was pointed out that "the Crown seeking to recover the tax must bring the subject within the letter of the law, otherwise the subject is free however much within the spirit of the law the case might appear to be. There can be no equitable construction admissible in a fiscal statute; the benefit of the doubt is the right of

the subject." In another case Sundar Das *vs.* Collector of Gujarat (3 Lahore 349) it was remarked thus :—

"It is a sound principle that the subject is not to be taxed without clear words to that effect; and that *in dubio* you are always to lean against the construction which imposes a burden on the subject." In our court Plumer C.J. cited with approval the principle enunciated in the above cases as to the inadmissibility of any equitable construction in a fiscal statute like the Income-tax Regulation. See 29, Mysore Chief Court Reports 107, p. 111.

In view of these well established canons of interpretation, I have to construe the provisions of the Income-tax Regulation, by the language employed in the relevent sections bearing on the subject of super tax without regard to equitable considerations or the intendment of the legislature in the matter of assessment.

8. As already stated the total income for super tax is the same as the total income arrived at for income-tax purposes, but the income assessable to super tax has to be fixed having regard to the provisions of Section 58 (1). From such assessable income should be excluded the income of the business earned in British India, and this result follows from the non-inclusion of Section 10 (4) among the exceptions specified in that section. Although the charging section (Section 55) for purposes of super tax and Schedule II would permit of the levy of super tax on the total income of the business both in British India and Mysore in excess of Rs. 50,000, still the non-inclusion of Section 10 (4) in Section 58 (1) as aforesaid would seem to call for the exclusion of the whole of the British Indian income from such excess, in computing the actual income liable for the levy of super tax in Mysore. This will practically lead to the result that super tax will become payable in Mysore, only when the Mysore portion of the assessable income is in excess of Rs. 50,000 and the tax will be leviable on only such excess.

9. I have had the advantage of reading the judgment of my learned brother which he is about to deliver. I am still unconvinced as to how the Mysore income of a non-resident foreigner is to be charged here, for super tax, when such income does not exceed Rs. 50,000. There is no provision in the Regulation or the rules framed thereunder, so far as I can see, for the adoption of the course as suggested, or for allocating between British India and Mysore, the statutory deduction of Rs. 50,000 referred to in Schedule II, or again for applying the rule of proportion as suggested, for determining the balance of Mysore income chargeable to super tax. It is true that the *total income* as defined in our Regulation is, as observed by my learned brother, a homogeneous compound of both the British Indian and Mysore income, and that in the sum of Rs. 50,000 deductable under Schedule II, a portion of both these incomes is included, but if we are to follow the accepted canons of construction, as I understand them, it is not for us to evolve a scheme for separating the parts of the homogeneous compound, and assigning rateable values to fill up the hiatus in the taxing statute.

"In a case of reasonable doubt (as, with respect, there seems to be here), the construction most beneficial to the subject is to be adopted."

See Oriental Bank Corporation *vs.* Wright (1880, 5 A.C. 842, p. 856 where it was observed that the intention to impose a charge on the subject must be shown by clear and unambiguous language. In Pryce *vs.* M. C. & R. Companies (1879) 4 A.C. 197, Lord Cairns observed that "inasmuch as there was no apriori liability in a subject to pay any particular tax, nor any antecedent relationship between the tax payer, and the taxing authority, no reasoning founded on any supposed relationship of the tax payer and the taxing authority could be brought to bear upon the construction of the Act, and therefore the tax payer had a right to stand upon the literal construction of the Act, and therefore the tax payer had a right to stand upon the literal construction of the words used, whatever might be the consequences."

These, and the authorities referred to in the earlier portion of my judgment make it clear, as I think, that unless a subject can be brought within the letter of the law, and not within its spirit, he is freed from liability, as he has the right to the benefit of the doubt. In the present instance, the question, so far as can be gathered, is not merely one of doubt. Section 10 (4) being admittedly a factor to be considered both for income tax and super-tax chargeable in Mysore, it seems to

follow that the conjoint effect of the words "subject to the provisions of this chapter" in Section 56, and the expressions "all the provisions of this Regulation except" and "so far as may be" in Section 58 (1), coupled with the non-inclusion of section 10 (4) in the excepted portion in the latter section is, that for determining the income chargeable to super tax in Mysore, the simple process of excluding the British Indian income from the total income is to be adopted before making the statutory deduction of Rs. 50,000 contemplated by Schedule II. In any case it seems to me that the courts are not to go outside the letter of the law, in construing an enactment of the kind for preventing what may be thought of as a possible evasion of its unexpressed intentions. Unless there is a definite liability imposed by clear terms, no question of obligations can arise. For these reasons I am obliged, on a construction of the relevent provisions of the Regulation, to come to the conclusion I have arrived at, in regard to the assessability to super tax in Mysore in a case of the kind now under reference.

The answers to the points referred to by the Income-tax Commissioner must, in these circumstances, await our final decision.

C. S. DORASWAMI IYER,
Judge.

Mr. Justice D. K. Rama Rao.—This case raises an important and interesting point which lies in a narrow compass. I do not propose to recapitulate the facts or the several sections of the Regulation which are lucidly and carefully cited by my learned brother and it is sufficient for my purpose to add a few words. I cannot discover any contridictions in the provisions of the Regulation for the levy of the income-tax and super tax. At the outset it is as well to refer to the confusion very often caused by the use of expressions like taxable, chargeable, assessable, and liable to tax, for they are applicable to two different stages in calculation. We have to bear in mind the distinction between *rating* for purposes of taxation and the actual *collection* of the tax; the one determines the relative rank or position of the assessee and the other the amount of tax to be paid by him on the basis of the rate so fixed. The rate is fixed on the total income while the actual tax to be collected is calculated at that rate upon only the *balance* of the total income after certain deductions specified in the Regulation which somewhat vary in details with regard to income-tax and super tax. The total income according to Sections 2 (15) and 16 (1) include also the British Indian income but when the tax is actually levied it is deducted as per provision in Section 10 (4). This is so both for income-tax and super tax. The taxing section for income-tax is Section 3 read with Schedule I and that for super tax is Section 55. The only difference for our present consideration between the income-tax and super tax is that whereas the entire income is liable to ordinary income-tax, the first Rs. 50,000 is exempted from super tax which is levied only on super income, meaning thereby the excess over the first Rs. 50,000.

It follows therefore that a Company is liable to be super taxed when its total income exceeds Rs. 50,000 irrespective of what portion of that income is derived in the Mysore State; in other words even if the income earned in the State is less than Rs. 50,000 it is *prima facie* to be taxed provided the total income calculated under Section 16 (1) exceeds Rs. 50,000. Neither of the Sections 10 (4) and 16 (1) is excluded under Section 58 and both are operative and have to be enforced. The greater part of the argument on behalf of the Company was directed to establish the proposition that since no tax is to be collected on the British Indian income unless it falls within the purview of Section 4 it could not be taken into consideration even for determining the *rate* as that would tantamount to taxing it indirectly. If that is all the contention it is against the clear intention of the Legislature, for the saving clause in Section 4 is directed to give full effect to Section 16 (1) which the Legislature has deliberately added. Admittedly no aid can be derived from the decisions and laws in other countries; each has its own statutes and arrangements. It is not for the courts to find reasons for the policy of the Legislature especially when interpreting the income-tax statutes.

"The Legislature must be intended to mean what it has plainly expressed, and consequently there is no rule for construction"—Maxwell on interpretation of

statutes, sixth edition, page six. Where the words of the section admit of no ambiguity judges are not entitled to add to or take from them—per Harrington J. in 27 Calcutta 724 (756). The scheme of the Regulation whether in respect of income-tax or super tax is repugnant to the theory that British Indian income could not be considered for purposes of rating. After all I cannot understand why we should fight shy of the principle that it is the capacity of the assessee based on his total income that should be the criterion for fixing the rate. The very graduation of rates for income-tax, and the high standarad of income requisite to give rise to liability for super tax go to indicate that the financial capacity as judged from income is all important. The higher the income the greater is the rate for income-tax or the liability for super-tax. If the liability for super tax is not determined by enforcing Section 16 (1) a person whose income for instance is Rs. 45,000 in Mysore and Rs. 45,000 in British India could successfully evade super tax both in Mysore and in British India.

Thus, so far as the enforcement of both Sections 10 (4) and 16 (1) are concerned my learned brother and I are of the same opinion ; but with regard to the application of Schedule II and Section 10 (4) and the conclusion to be arrived at, after carefully considering the matter, with all deference, I feel constrained to differ from him. My endeavour is to remove the conception that super tax will become payable in Mysore only when the Mysore portion of the income exceeds Rs. 50,000. Under Schedule II the "Excess over Rs. 50,000 of *total income*" is liable to super tax. Section 16 (1) and Schedule II deal with the total income and Section 10 (4) separates the State income from British Indian income for purposes of actual taxation. These several stages are very important and should be carefully and strictly followed, and any construction which facilitates the evasion of the statute should be avoided. Now the total income as determined under Section 16 is a mixture of both the Mysore and British Indian incomes and while it is in that condition the whole and every part of it is made up of both the Mysore and British Indian incomes. If in this state of totality of the income the provisions of Schedule II are applied, the total income is split up into two portions, (*a*) the first Rs. 50,000 of the total income which is exempted from super tax and (*b*) the balance of the total income, or super income if I may so style it, which is liable to super tax. It is obvious that both the figures (*a*) and (*b*) have all the characteristics of the totality, that is, every part of it comprises both the Mysore and British Indian incomes. The function of Section 10 (4) commences at this stage and that function is to separate the Mysore portion of the total income from the British Indian income, while Schedule II divides the total income into two parts *without* any reference to the locality, namely Mysore and British India. It is very important to note this essential difference between the functions of Schedule II and Section 10 (4), for though their application has the effect of partitioning the total income their aim, scope and effect are quite different. Perhaps it may be stated that Schedule II and Section 10 (4) cut the total income in different plans, one horizontally and the other vertically. In the case of income-tax, Section 10 (4) is applied once for all and hence there is no difficulty, but when it is taken up in connection with super tax some confusion is likely to rise since it will have to be applied both before and after deducting Rs. 50,000 in accordance with Schedule II.

To take an illustration : If the Mysore income is Rs. 20,000 and the British Indian income Rs. 80,000 the total income comes up to one lakh. Out of this one lakh the first Rs. 50,000 is first to be deducted in compliance with the imperative direction in Schedule II to find the excess or super income before any further deduction or deductions can be thought of. There can be no reason whatever to treat the first Rs. 50,000 in Schedule II as Mysore income ; for it would be equally pertinent for the Crown to contend that the whole of the said first Rs. 50,000 is to be treated as the British Indian income alone. As explained above, the total income, and every part of it is made up of both kinds of income, so that in every unit of coin in one lakh as well as in the excess or super income of Rs. 50,000, one-fifth portion is Mysore income and four-fifths British Indian income. The function of Section 10 (4) is to find out the value of the *Mysore portion* of the super income which is liable to super tax ; that portion obviously is one-fifth of Rs. 50,000 or Rs. 10,000. In British India also, under similar conditions super tax would be liable on four-fifths of Rs. 50,000 or Rs. 40,000. The total amount of super tax thus levied in both

the countries put together would be only on the excess contemplated in Schedule II.

The principles seem to be clear. Whatever the reasons or policy may be, the rate of income-tax or super tax is determined on the capacity of the assessee as judged from his total income including British Indian income, but actual collection is made only on the Mysore portion after deducting the British Indian portion. Now such a deduction can be made only once, and not more than once merely on the score of references made to deductions in different parts of the Regulation. The object is not to tax the British Indian portion and thereby obviate any hardship from the probable double taxation by levying the tax both in Mysore and British India, but it is not meant that the same British Indian income should be deducted more than once in different forms. Rupees. 50,000 referred to in Schedule II is not an arbitrary figure independent of the total income, but it is its first portion ; that being so there can be no reason to deduct the said portion once again from the excess or balance. This appears to me to be the only possible and reasonable interpretation that can be given if we are to give effect to the provisions of the Regulation and not evade them. When I suggested my ideas to my learned brother I might have safely dispensed with the word *equitable*, for in my opinion there is no application of any rule of equity in its *technical* sense ; in fact if equity is applied at all in this case by my interpretation, I cannot see how it is not in the favour of the subject, for the whole of Rs. 50,000 might as well be treated as the British Indian income if the opposite contention is to be pressed. The language of the Regulation is plain and unambiguous for Schedule II clearly makes the excess over Rs. 50,000 chargeable with super tax. Deductions are permissible only to the extent authorised and no more. While we cannot tax the subject beyond the expressed provisions we cannot also " Whittle down " the tax due to the Crown by giving deductions for unauthorised items; both cases are liable to the principle of strict construction. If we concede, as we must by reason of the express words in Schedule II, that Rs. 50,000 is part of the *total income* and if we further concede that the said portion of the total income, includes British Indian income, then there can no ground whatever to deduct the British Indian income in *its entirety from the balance left*. The total income is a homogeneous compound of both the incomes, and if Section 10 (4) is to be enforced the separation of the two incomes thereunder can be possible only by fixing their values in the whole as well as in the parts only as explained above. The logical consequences, in my opinion, must necessarily lead to the result arrived at by me and there seems to be no escape from it.

If as I said above the wording of the enactment is plain and unambiguous it is not necessary to seek for the object and intention of the Legislature by consideration of matters outside the Section itself—Sir John Edge C. J., in Indian Law Reports 16 Allahabad 136 (152). When 'the words of the two sub-sections were unambiguous' the court felt itself bound to give effect to them—24 Madras 195 (199).

" To carry out effectually the object of a statute it must be so construed as to defeat all attempts to do or to avoid in an indirect or circuitous manner that which it has prohibited or enjoined " Maxwell, page 207.

" The courts are to give the statute a reasonable construction. They will not readily presume, out of the respect and duty to the lawgiver, that any very unjust or abused consequence was within the contemplation of the law. But if it should happen to be too palpable in its direction to *admit of but one construction* there is no doubt, in the English law, as to the binding efficacy of the statute. The will of the Legislature is the supreme law of the land, and demands perfect obedience." —Ibid. p. 460.

In 8 Mysore Law Reports p. 60 the same rule of construction was enunciated by the esteemed Judges, C. G. Plumer, C. J., and A. Ramachandra Iyer, J., who observed.

" So construed, the provisions of.... .....would be completely nullified and the Legislature would stand convicted of having perpetrated the manifest absurdity of having contradicted in one breath what it had asserted in the previous breath. It is clear that we should not be justified in applying such a construction, if we could find any other fair and reasonable construction which will reconcile the provisions of..... ... .with the provisions of.... .....".

The alternative interpretation of giving deduction to the *entire* British Indian income in *addition* to the first Rs. 50,000 of Schedule II was not mooted by the learned counsel for the Company, presumably, as I think, because it could not be maintained. I am unable to agree with the learned Government Advocate that the non-inclusion of Section 10 (4) in Section 58 is an omission or a weakness in the case for the Crown. It seems to me that Section 10 (4) had necessarily to be omitted in Section 58 for the simple reason that neither kind of tax can be *collected* (as opposed to rating) on the British Indian income as such, unless it falls within the purview of Section 4. In my opinion the construction suggested is defective in as much as it fails to give effect to the charging provisions in Sections 55 and Schedule II and allows deductions beyond what the Regulation authorises. No flaws have been pointed out in the decision I have arrived at, which, while it prevents an individual liable to super-tax in Mysore and British India under similar conditions (as it really is at present) from evading payments in both the countries, also extends to him the requisite protection against double taxation ; if this is so, perhaps there may be no need for any reciprocal arrangement on the point.

Answers to the questions of the Referring Officer can be formulated only after the matter is finally settled.

D. K. RAMA RAO,
Judge.

ORDER OF REFERENCE TO THE FULL BENCH.

There being a difference of opinion between us, on a material point of law, arising out of this reference in regard to the construction of the provisions of the Mysore Income-tax Regulation relating to super tax, we refer the matter in difference to the Full Bench under Section 15 (3) of the Mysore Chief Court Regulation, I of 1884.

C. S. DORASWAMI IYER,
Judge.

D. K. RAMA RAO
Judge.

Monday, the 14th day of December 1925.

PRESENT

Mr. Justice R. B. Plumer, *Chief Judge,*

Mr. Justice C. S. Doraswami Iyer,

and

Mr. Justice D. K. Rama Rao.

This civil referred case coming on for final hearing on the point of law referred to it before the Full Bench on Tuesday, the 1st day of December 1925, and after hearing the arguments of Mr. L. A. Govindaraghava Iyer, Advocate for the assessee Company, and those of Mr. K. Shankarnarayana Rao, Government Advocate, for the Commissioner of Income-tax in Mysore, the Court expressed the following :—

OPINION.

The Chief Judge.—In the matter of a reference to this Court under Section 66 (2) of the Mysore Income-tax, Regulation, V of 1923 there being a difference of opinion between the learned Judges who constituted the Bench for the hearing of the reference the point in difference has been referred to the Full Bench under Section 15 (3) of the Mysore Chief Court Regulation, I of 1884.

The questions referred to this Court under Section 66 (2) of the Mysore Income-tax Regulation, V of 1923 are fully set out in the Judgment of the two learned Judges constituting the Bench. In respect of them, both the learned Judges agree in holding that in computing the "total income" of an assessee for the purpose of assessing and charging either income-tax under Schedule I of the Income-tax Regulation, V of 1923 or additional income-tax otherwise known as "supper tax" under Schedule II of the Regulation the definition of total income as expressed in Section 16 (1) of the Regulation entails the inclusion of income, if any, accruing from such of the assessee's business as may be carried on in British India even though such income has not been received into the Mysore State by the assessee, but whereas Mr. Justice Doraswami Iyer holds that while the expression "total income" for income-tax is the same as the expression "total income" for super tax, from the income *assessable* to income-tax the income earned in British India must be excluded by virtue of Section 10, Clause 4 of the Regulation and as Section 10, Clause 4 is not included among the exceptions specified in Section 58 (1) of the Regulation the provisions of the said Section 10 (4) are as applicable to the assessment of additional income-tax, *i.e.* super tax as to the assessment of income-tax and he holds that as a result the income earned in British India must first be deducted in order to ascertain if the balance is chargeable with super tax by virtue of its exceeding Rs. 50,000: if it does so exceed then the excess over Rs. 50,000 is the amount chargeable to super tax. Mr. Justice Rama Rao, on the other hand holds that as the total income as defined by Section 16 (1) is a mixture of both the Mysore and British India incomes the total income if it exceeds Rs. 50,000 becomes, on the application to it of the provisions of Schedule II, split up into the Rs. 50,000 exempted from super tax and the excess which is liable to it. He would then and only then apply Section 10 (4) and deducting the British India income from the Mysore income he would hold liable to super tax the two incoms in the proportion in which they stand to the total income.

With respect this view is in my opinion fallacious in that it fails to give effect to the main underlying characteristic and intention of the Income-tax Regulation, *viz.*, that only income accruing in or received into Mysore within the meaning of Section 4 (1) of the Regulation or which can be deemed to have accrued in or been received into Mysore within the meaning of Section 42 (1) of the Regulation, shall be chargeable with Mysore Income-tax Regulation, while in the matter of income accruing in British India Section 10 (4) expressly provides that it shall be excluded from liability to be charged, and the express provision is retained in Section 58, Clause 1 which excludes it from the exceptions specified therein, it logically follows as it seems to me that income earned in British India not received into Mysore can no more be used to make Mysore income chargeable to additional income-tax than it could be used to swell the amount of Mysore income chargeable in the first place to income-tax.

To hold otherwise would without any violence to probabilities make an income too small to be even liable to "income-tax" liable to super tax, *i.e.*, additional income-tax, which is an absurdity.

My answer to the reference is therefore that Mysore income not otherwise chargeable to super tax cannot be made liable to it by adding to it income earned and received in British India. If in order to ascertain the total income the effect of Section 16 (1) is to necessitate taking both incomes into consideration, and I am not at all to be held to agree that that is its proper interpretation and legal effect, then to ascertain how much of that total income is chargeable to additional income-tax the amount earned in British India must first be deducted and if the balance, or the Mysore income, exceeds Rs. 50,000 then the excess is the amount and the only amount chargeable to super tax.

R. B. PLUMER,
Chief Judge.

Mr. Justice C. S. Doraswami Iyer.—I have already stated my views on the points raised, and I have nothing more to add, except to express my concurrence with the conclusions of the learned Chief Judge.

C. S. DORASWAMI IYER,
Judge.

Mr. Justice D. K. Rama Rao.—In view of the opinions expressed by the learned Chief Justice and Doraswami Iyer, J., I have given my most careful consideration and further examined the position taken by me, but with great respect I am unable to come to the conclusion they have arrived at.

So long as Section 16 (1) and Schedule II which is to be read as part of Section 55 remain in the statute as at present worded it seems to me that no other interpretation than the one I have given is possible. We cannot keep Section 16 (1) in the Regulation and at the same time have in Mysore conditions similar to those obtaining under the British Indian Act in which that Section is wanting. If by reason of Section 16 (1) we agree to increase the total income by including in it the British Indian income and to thereby raise the rate for income-tax, as we must do in accordance with Section 3 read with Schedule I, the very same total income under Sections 55 and 56 necessarily brings in the further consequence which cannot be ignored of liability for super tax.

The one other point to which I have now to refer is the suggested procedure to first deduct the British Indian income from the total income before deducting the statutory allowance of Rs. 50,000. That however in my opinion clearly contravenes the express direction in Schedule II read with Section 55, which is mandatory, for Rs. 50,000 is part of the total income and is to be cut out of the total income; if British Indian income is first deducted from the total income what remains is only the Mysore income so that if Rs. 50,000 is to be deducted thereafter from the said balance it will be out of the Mysore income alone and not out of the total income as contemplated in Schedule II. The words "so far as may be" in Section 58 of Chapter IX of the Regulation make it imperative that the provisions of the prior chapters can be made applicable without prejudice to those in Chapter IX and Schedule II relating to the imposition of super tax.

The mere process of calculation to give effect to the principle is of secondary importance and should not be allowed to obscure or be an impediment to the solution of the question; it is immaterial whether the circumstances make that process one of addition or subtraction or rule of proportion. In my opinion no express Section is necessary for resorting to ordinary arithmetic in order to put the principle into operation when it is correct and has to be adopted.

In other respects I have nothing more to add to my earlier judgment and I do not find sufficient grounds to modify or alter the view therein expressed.

D. K. RAMA RAO,
Judge.

With these opinions and the dissenting opinion of Mr. Justice D. K. Rama Rao, the reference is returned to the referring Bench to answer the questions before it.

Sd. R. B. PLUMER,
Chief Judge.

Sd. C. S. DORASWAMI IYER,
Judge.

Sd. D. K. RAMA RAO.
Judge.

CIVIL REFERRED CASE No. 9 of 1924-25.

Tuesday, the 19th day of January 1926.

PRESENT

Mr. Justice C. S. Doraswami Iyer,

and

Mr. Justice D. K. Rama Rao.

This civil referred case coming on for final disposal on Monday, the 18th day of January 1926, the Court pronounced the following :—

ORDER.

In accordance with the opinion of the Full Bench, the reference of the Income-tax Commissioner will be answered thus :—

(*a*) In the case of a business carried on partly in British India and partly in Mysore, super tax is chargeable only on the assessable income in Mysore.

(*b*) and (*c*) The cumulative effect is that which is indicated in the judgments of the majority of the Judges of the Full Bench. From the total income as computed in accordance with Section 16 (1), the statutory deduction of Rs. 50,000 has to be made, and on so much of the balance as may represent the actual income derived in Mysore and taxable under Section 58 (1), super tax is leviable.

(*d*) In view of the opinion expressed in the judgments and of the answers given above in regard to questions (*a*), (*b*) and (*c*), this question calls for no specific answer. We make no order as to the costs of this reference.

C. S. DORASWAMI IYER,
Judge.

D. K. RAMA RAO,
Judge.

W D 1846 -GPB—200—1-4-26

22208

In reply please refer to
No. 8814
Tel. Address:—
"JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE IN MYSORE

Bangalore. 26th November *1925.*

DIARY NO. 2649
19

FROM

K. SHANKARANARAYANA RAO, ESQ., M.A., B.L.
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE

GEN. & REV. SECTT.
28 NOV 1925
REV. SECTION.

To

The Secretary to the Government
of H. H. the Maharaja of Mysore,
Revenue Department, BANGALORE.

SIR,

With reference to your letter No. F.L.2764 dated the 19th November 1925, I have the honour to state that final orders have not yet been passed by the Chief Court in Civil Referred Cases Nos.9, 10 & 11 of 1924-25 (Income-Tax references relating to the Swadeshi Mills, Ltd., Etc.,). As there was a difference of opinion between the two Judges, the matter has been referred to a Full Bench of the Chief Court, and a copy of the Judgment will be forwarded to Government, as desired, as soon as the same is passed.

A copy of the Order of reference to the Full Bench will however be sent early.

By

I have the honor to be,

Sir,

Your most obedient servant,

Government Advocate.

Subd. for information.
(The case is the one relating to the interpretation of the words "total income" in Section CSN. 16 (1) of the I.T. Act.)

1. Please call for copies of the opinions of the Judges — I understand the matter came up before the full bench on Monday (?). I continued on Tuesday (?). I continued on Tuesday (?). Full Bench may be called for

5058
2/12

F.M G1.]

SUBJECT.....

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

, the 192

Date of issue 9.12.25

Signed by Jas B.B.R.

List of enclosures.....

Copied by .....

Examined by .....

Section

File No.

Serial No.

No. H 3233/

To The Govt. Advocate in Mysore

Sir,

Adverting to your letter no. 3848 28th Nov 1925, I am directed to request that a copy of the Full Bench order in the D.T references relating to the Swadeshi mills Ltd etc may to the Chief Court may kindly be forwarded as soon as the same is passed.

I have etc

By

Rev. Secy to Govt Rev. Deptt.

over

... reply please refer to
No. 404

Tel. Address:—
"JURIST" Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
23286 IN MYSORE,
Bangalore. 5th December 1925.

7th DIARY 8113

8. DEC. 1925

19 19

GENL. & REGL. BR. 7. DEC. 1925 G. D. SECTION.

FROM
K. SHANKARANARAYANA RAO, ESQ, M.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To
The Secretary to the Government
of H. H. The Maharaja of Mysore,
BANGALORE.

SIR,

Registered By H

In continuation of this office letter No. 384 dated the 28th November 1925, I have the honour to forward herewith, for the information of Government, a copy of the Order of Reference to the Full Bench, passed in Civil Referred Case No. 9 of 1924-25 on the file of the Chief Court of Mysore.

P.S. No matter has since been argued before the Full Bench & judgment has been passed.

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.

CSN,

29437

In reply please refer to
No. 491

Tel. Address:—
"JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore.... 9th January 1926 ~~192~~

DIARY NO. 2439
19

FROM. K. SHANKARANARAYANA RAO, ESQ., M.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

REVENUE & GENERAL DEPARTMENT
BR.
9 JAN. 1926
To
G. D. SECTION

The Secretary to the Government
of H. H. the Maharaja of Mysore,
Revenue Department, BANGALORE.

SIR,

In continuation of this office letter No. 457 - dated the 5th January 1926, I have the honor to forward herewith, for the information of Government, a copy of the order of the Full Bench, in Civil Referred Case No. 9 of 1924-25, on the file of the Chief - Court of Mysore.

I have the honor to be,
Sir,
Your most obedient servant,

Government Advocate.

Monday, the 14th day of December 1925.

Present.

Mr. Justice R. B. Plumer, Chief J u d g e,

Mr. Justice C. S. Doraswami Iyer
and
Mr. Justice D. K. Rama Rao.

Civil Referred case No.9 of 24-25.

This Civil Referred case coming on for final hearing on the point of Law referred to it, before the Full Bench, on Tuesday, the 1st day of December 1925, and after hearing the arguments of Mr. L. A. Govindaraghava Iyer, Advocate for the assessee company, and those of Mr. K. Shankaranarayana Rao, Government Advocate, for the Commissioner of Income-tax in Mysore, the Court expressed the following ~~OPINION~~:-

O P I N I O N.

The CHIEF JUDGE:- In the matter of a reference to this Court under section 66 (2) of the Mysore Income-tax Regulation V of 1923, there being a difference of opinion between the learned Judges who constituted the Bench for the hearing of the reference, the point in difference has been referred to the Full Bench under section 15 (3) of the Mysore Chief Court Regulation I 1884.

The question referred to this Court under section 66(2) of the Mysore Income-tax Regulation V of 1923, are fully set out in the Judgemnt of the two learned Judges constituting the Bench. In respect of them, both the learned Judges agree in holding that in computing the "total income" of an assessee for the purpose of assessing and charging either Income-tax under Schedule I of the Income-Tax Regulation V of 1923, or additional income-tax, otherwise

otherwise known as "Super-tax" under schedule II of the Regulation, the definition of total income as expressed in section 16 (1) of the Regulation entails the inclusion of income, if any, accruing from such of the assessee's business as may be carried on in British India, even though such income has not been received into the Mysore State by the assessee, but whereas, Mr. Justice Doraswami Iyer holds that while the expression "total income" for income-tax is the same as the expression "total income" for super tax, from the income assessable to income tax, the income earned in British India must be excluded by virtue of section 10, clause 4 of the Regulation and as section 10, clause (4) is not included among the exceptions specified in section 58 (1) of the Regulation, the provisions of the said section 10(4) are as applicable to the assessment of additional income-tax i.e., super tax, as to the assessment of income-tax and he holds that as a result, the income earned in British India must first be deducted in order to ascertain if the balance is chargeable with super tax by virtue of its exceeding Rs.50,000/-; if it doe so exceed, then the excess over Rs.50.000/- is the amount chargeable to super tax. Mr. Justice Rama Rao, on the other hand, holds that as the total income as defined by section 16(1) is a mixture of both the Mysore and British India incomes, the total income if it exceeds Rs.50,000/-, becomes, on the application to it of the provisions of schedule II, split up into Rs.500,000/- exempted from super tax, and the excess which is liable to it. He would them, and only then apply section 10(4) and deducting the British India income from the Mysore income, he would hold liable to super-tax, the two incomes in the proportion in which they stand to the total income.

With respect, this view is in my opinion fallacious in that it fails to give effect to the main underlying characteristic and intention of the Income-tax Regulation, viz., that only income accruing in or received into Mysore within the meaning of section 4(1) of the Regulation or which can be deemed to have accrued in or been received into Mysore within the meaning of section 42(1) of the Regulation, shall be chargeable with Mysore Income-tax, while in the matter of income accruing in British India, section 10(4) expressly provides that it shall be excluded from liability to be charged, and that express provision is retained in section 58 clause 1, which excludes it from the exceptions specified therein, it logically follows as it seems to me that income earned in British India not received into Mysore can no more be used to make Mysore income chargeable to additional income tax than it could be used to swell the amount of Mysore income chargeable in the first place to Income tax.

To hold otherwise, would without any violence to probabilities make an income too small to be even liable to "income tax", liable to "super tax", i.e., additional income tax", which is an absurdity.

My answer to the reference is, therefore, that Mysore income not otherwise chargeable to super tax cannot be made liable to it by adding to it income earned and received in British India. If, in order to ascertain the total income the effect of section 16(1) is to necessitate taking both incomes into consideration, and I am not at all to be held to agree that that is its proper interpretation and legal effect, then to ascertain how much of the total income is

chargeable

chargeable to additional income tax the amount earned in British India must first be deducted and if the balance, - or the Mysore Income, exceeds Rs. 50,000/- then the excess is the amount and the only amount chargeable to super ~~tax~~ tax.

Sd/- R. B. PLUMER,
Chief Judge.

Mr. Justice C. S. DORASWAMI IYER:-

I have already stated my views on the points - raised, and I have nothing more to ~~add~~ add, except to express my concurrence with the conclusions of the learned Chief Judge.

Sd/- C. S. DORASWAMI IYER,
J u d g e.

Mr. Justice D. K. RAMA RAO:-

In view of the opinions expressed by the learned Chief Justice and Doraswami Iyer J, I have given my - most careful consideration and further examined the position taken by me, but with great respect, I am unable to come to the conclusion they have arrived at.

So long as section 16(1) and Schedule II which is to be read as part of section 55 remain in the Statute as at present worded, it seems to me that no other interpretation than the one I have given is possible. We cannot keep section 16(1) in the Regulation and at the same - time have in Mysore conditions imilar to those obtaining under the British Indian Act in which that section is wanting. If, by reason of section 16(1) we agree to increase the total income by including in it, the British Indian -

ncome

income and to thereby raise the rate for income tax, as we must do in accordance with section 3, read with Schedule I, the very same to-tal income under sections 55 and 56 necessarily brings in the further consequence which cannot be ignored of ~~further~~ liability for super-tax.

The one other point to which I have now to refer is the suggested procedure to first deduct the British Indian Income from the total income before deducting the statutory allowance of Rs.50,000/- That, however, in my opinion clearly contravenes the express direction in Schedule II, read with section 55, which is mandatory, for Rs.50,000/- is part of the total income and is to be cut out of the total income; if British Indian income is first deducted from the total income what remains is only the Mysore income so that if Rs.50000/- is to be deducted thereafter from the said balance, it will be out of the Mysore income alone and not out of the total income as contemplated in schedule II. The words "so far as may be" in section 58 of Chapter IX of the Regulation make it imperative that the provisions of the prior chapters can be made applicable without prejudice to those in Chapter IX and schedule II relating to the imposition of super-tax.

The mere process of calculation to give effect to the principle is of secondary importance and should not be allowed to obscure or be an impediment to the solution of the question; it is immaterial whether the circumstances make that process one of addition or subtration or rule of proportion. In my opinion no express section is necessary for resorting to ordinary arithmetic in order to put the principle into operation when it is correct and has to be adopted.

In other respects, I have nothing more to add to my earlier Judgment and I do not find sufficient grounds - to modify or alter the view therein expressed.

Sd/- D. K. RAMA RAO.
Judge.

With these opinions and the dissenting opinion of Mr. Justice D. K. Rama Rao, the reference is returned to the referring Bench to answer the questions before it.

Sd/- R. B. PLUMER,
Chief Judge.

Sd/- C. S. DORASWAMI IYER,
J u d g e.

Sd/- D. K. RAMA RAO,
J u d g e.

Copy.

Government Advocate.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Thursday, the 5th day of November 1925.

Present

Mr. Justice C. S. Doraswami Iyer

and

Mr. Justice D. K. Rama Rao.

CIVIL REFERRED CASE No. 9 of 1924 - 1925.

In the matter of a reference under Section 66(2) of the Mysore Income -Tax Regulation V of 1923, by the Commissioner of Income-Tax in Mysore (received with his No. C.669 of 1924-25, dated 13th June 1925) submitting for the decision of this court a statement of the case relating to the assessment of the income of the Central India Spinning, Weaving and Manufacturing Company, Ltd., Bombay, to Supertax for the year 1923-24.

Heard :- Mr. L.A. Govindaraghava Iyer for the assessee Company.

K. Shankaranarayana Rao, Government Advocate, for Government.

O r d e r.

Mr. Justice C.S. Doraswami Iyer :- This is a case of reference under Section 66(2) of the Mysore Income-Tax Regulation V of 1923, in the matter of the assessment of the Central India Spinning, Weaving and Manufacturing Company, Ltd., Bombay, to Supertax for the year 1923-24.

2. The Company in question having its registered office in Bombay, carries on business partly in British India and partly in Mysore. The Commissioner for Income-tax has held that the company is liable to pay both income tax and super tax on the income accrued in Mysore, which he assessed at Rs.24,699/-. The company has accepted the assessment for incometax, but has demurred to its liability to assessment for supertax, on the ground that the taxable income from its business in the State is less than Rs.50,000/-. On the application of the assessee the Commissioner has made this reference raising the following questions for decision:-

(a) Whether the effect of Section 58(1) of the Mysore Income-tax Regulation V of 1923 is to make Section 10(4) applicable to the charging of Supertax without any qualification?

(b) If the above question is answered in the affirmative, what is the cumulative effect of Sections 55, 56 and 58(1) of the Regulation, and is it such as to require the successive deduction from the total income (as defined in Section 16(1) of the statutory allowance of Rs.50,000/- and of the British Indian income?

(c) Whether only the amount left over after the above deduction is assessable to supertax?

(d) What is the effect of the words "save as hereinafter provided" in Section 4(1), and of "so far as may be" in Section 58(1), and do they permit ~~effixing~~ of the

of the interpretation put by me on Section 16(1) and 55, 56 and 58 in the decision now objected to by the petitioners?

3. For a proper understanding of the questions raised we have to consider the provisions of the Regulation bearing on the subject of assessment, not only to supertax but to income tax also. Under Sections 3 and 4, income tax has to be charged at the rate or rates specified in Schedule 1, in accordance with and subject to the provisions of the Regulation on all income, profits or gains as precribed or comprised in Section 6, accruing or arising or received in Mysore, or deemed under the provisions of the Regulation to accrue, arise, or to be received in Mysore. Section 6 enumerates the heads of income so chargeable and Sections 7 to 12 describe the manner in which the charge is to be made in the case of each of these heads, subject to the allowances and deductions specified thereunder. Then follow exemptions of a general nature (section 14) and special exemptions in respect of lifeinsurance premia, and other payments of similar kind (section 15). The income computed in accordance with the provisions of the above sections forms the basis of taxation and is generally known as taxable income, i.e., income chargeable to incometax.

4. This taxable income is, however, different from the total income within the meaning of section 2(15), which is to be computed in the manner laid down in Section 16 in order to determine the liability of a person to taxation (i.e. whether his total income amounts to a -

minimum of

minimum of Rs.2,400/-) and the rate at which the tax is to be charged under Schedule 1. In such total income is to be included among other deductions, any sum representing the profits or gains in British India of a business carried on both in British India and Mysore, which under Section 10(4) is not chargeable to incometax in Mysore, that is to say, while the said sum is not actually subject to incometax here, it has to be included for the purpose of determining laibility to such tax, and the rate to be charged on the taxable income.

5. This distinction between the taxable income and the total income has to be borne in mind in construing the provisions of Regulation V of 1923, in this reference, in their application to supertax. Under Section 35, supertax is payable on the total income of the previous year at the rates laid down in Schedule 11. Under section 56, the total income for purposes of supertax shall, subject to the provisions of Chapter IX, be the total income as assessed for purposes of incometax. The result appears to be that while the total income computed for income-tax is to be regarded as the total income for supertax purposes, the actual income liable to supertax is under Section 58 to be determined in accordance with the provisions of the Regulation, excepting those contained in the provisoes, sub sections and sections mentioned in Section 58(1). Among those excepted provisions is not included Sub Section (4) of Section 10, and the provisions of this Sub Section have therefore to be taken into account in computing the amount liable

to

liable to supertax under our Regulation. As the Sub Section allows deduction of profits or gains accruing on transactions in British India in respect of a business carried on there as well as in Mysore, supertax is assessable only on the actual income derived by the business in Mysore, though the liability to such tax is dependent on the total income of the business derived both in British India and in Mysore as computed in the manner aforesaid. If such total income exceeds Rs.50,000/- supertax is leviable on such excess income, as per schedule 11 read with Section 55, reduced by the amount representing the profits or gains of the portion of the business carried on in British India in conformity with the provisions of Section 58(1), as explained above. Such a construction is consistent with the provisions of Section 4(2) and Section 42(1), and the reciprocal arrangement made between the Government of India and the Government of Mysore for affording relief from double income-tax, in the case of assessees carrying on business both in British India and in the Mysore State. Section 4(2) applies to profits or gains accruing or arising without Mysore to a person residing within, and section 42(1) to profits or gains accruing or arising through or from any business connection in Mysore to a person residing without. In either case such profits or gains are to be deemed as accruing or arising in Mysore, and are chargeable to incometax here. The reciprocal arrangement referred to above is given effect to in Mysore by the provision contained in Section 10(4) of the Regulation, and in British India by special instructions of the Government of India conveyed in their letter of the Financial Department, No. 2134, dated 4-6-1924, embodied in paragraph 14, p. 86 of the Mysore -

Income-

Income-tax Manual. The terms of this arrangement so embodied coupled with the absence of any specific provision in the returns prescribed under Section 22 of the Regulation for showing the deductions of earnings in British Indda of a business carried on partly there and partly here would seem to lend colour to the contention that section 10(4) was not intended to apply to residents in British India carrying on such business.

7. Mr. L.A. Govindaraghava Iyer who argued the case with much ability and clearness, goes one step further, and urges that section 10(4) was designed merely for ascertaining the income of a business in Mysore carried on partly here and partly in British India, by the simple process of excluding the amount of profits or gains appearing to the assessing officer to be due to transactions in British India. Such a construction, he points out, will be in accord with sections 3 and 4 of the Regulation under which, according to the decisions cited in Ali Imam vs. Incometax Commissioner (85 Indian Cases 164 (Patna)), and relied on by the learned Advocate, the income earned outside the taxing State shall not be chargeable in that State unless (1) it is received within that State, or is deemed to accrue or arise or to be received herein or (2) unless it constitutes the profits or gains of a business actually received in that State within the meaning of Section 4(2). As, in the present case, the profits or gains of the assessee, in so far as they relate to the transactions in British India could not be deemed to have accrued or arisen in Mysore, nor received there, he argues, that they could not be

taken

taken into account in computing the total income for assessment purposes in Mysore. Whatever may be the force of this line of argument in its application to the provisions of the British Indian Income Tax Act, it cannot prevail here, in view of the express provisions of Section 16(1) of the Mysore Income Tax Regulation V of 1923, wherein it is expressly stated that in the case of profits or gains in British India of a business carried on both there and in Mysore, the deduction admissible under Section 10(4), in respect of the earnings in British India, shall be included for computing the total income in Mysore. It may be observed that although in Section 9(3) of the previous Regulation of 1920, there was a provision identical in terms with that of Section 10(4) of the present Regulation, there was not in the computing section (Section 13) of that Regulation, as there is in Section 16(1) of the present Regulation any provision for including the deduction aforesaid, for determining the total income. This change in the language of the present Regulation, has to be construed as connoting a change of intention on the part of the Legislature in this respect. In construing a taxing statute the court has to give effect to the intention of the Legislature as gathered from the language employed, having regard to the context. It is not open to the Court "to narrow or whittle down the operation of the Act by considerations of hardship, business convenience or the like" - See Attorney General Vs. Carlton Bank (1899), 2 King's Bench, 158, page 164. I have therefore to hold that as the Regulation stands at present, the profits or gains earned in British India by a business partly carried on there, and

partly

partly here, should be included for ascertaining the total income of an assessee in Mysore.

8. At the same time in construing and applying fiscal statutes, the observations of Lord Cairns in the leading case of Partington Vs. Attorney General (1869) L.R. 4 H.L. 100 have to be borne in mind: viz, :-

> "As I understand the principle of all fiscal legislation, it is this. If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute where you should simply adhere to the words of the statute".

This principle was emphasized, in a later case, by Lord Blackburn in Coltness Iron Co., Vs, Black (1881) 6 A. C. 315, in the following words :-

"No tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden on him. But when that intention is sufficiently shown, it is not open to speculate on what would be the fairest and most equitable mode of levying that tax".

There are

There are also several English and Indian decisions to the same effect. For instance in Killing Valley Tea Co., Vs. Secretary of State for India (48 Calcutta 157) it was pointed out that

> "the crown seeking to recover the tax must bring the subject within the letter of the law, otherwise the subject is free however much within the spirit of the law the case might appear to be. There can be no equitable construction admissible in a fiscal statute; the benefit of the doubt is the right of the subject".

In another case Sundar Das Vs. Collector of Gujarat - (3 Lahore 349) it was remarked thus :-

> "It is a sound principle that the subject is not to be taxed without clear words to that effect; and that <u>in dubio</u> you are always to lean against the construction which imposes a burden on the subject".

In our own court Plumer C.J. cited with approval the principle enunciated in the above cases as to the inadmissibility of any equitable construction in a fiscal statute like the Income Tax Regulation. See 29 Mysore Chief Court Reports 107, p. 111.

In view of these well established canons of interpretation, I have to construe the provisions of the Income Tax Regulation, by the language employed in the relevant sections bearing on the subject of supertax without regard to equitable considerations or the intendment of the legislature in the matter of assessment.

9. As already stated the total income for supertax is the same as the total income arrived at for incometax purposes, but the income assessable to supertax has to be fixed having regard to the provisions of section 58(1). From such assessable income should be excluded the income of the business earned in British India, and this result follows from the non-inclusion of section 10(4) among the exceptions specified in that section. Although the charging section (section 55) for purposes of supertax and Schedule II would permit of the levy of supertax on the total income of the business both in British India and Mysore in excess of Rs.50,000/-, still the non-inclusion of section 10(4) in section 58(1) as aforesaid would seem to call for the exclusion of the whole of the British Indian income from such excess, in computing the actual income liable for the levy of supertax in Mysore. This will practically lead to the result that supertax will become payable in Mysore, only when the Mysore portion of the assessable income is in excess of Rs. 50,000/- and the tax will be leviable on only such excess.

10. I have had the advantage of reading the judgment of my learned brother which he is about to deliver. I am still unconvinced as to how the Mysore income of a non-resident foreigner is to be charged here, for supertax, when such income does not exceed Rs. 50,000/-. There is no provision in the Regulation or the rules framed thereunder, so far as I can see, for the adoption of the course as suggested, or for allocating between British India and Mysore, the statutory deduction of

Rs.

Rs. 50,000/- referred to in Schedule II, or again for applying the Rule of proportion as suggested, for determining the balance of Mysore income chargeable to supertax. It is true that the total income as defined in our Regulation is, as observed by my learned brother, a homogeneous compound of both the British Indian and Mysore income, and that in the sum of Rs. 50,000/- deductable under Schedule II, a portion of both these incomes is included, but if we are to follow the accepted canons of construction, as I understand them, it is not for us to evolve a scheme for separating the parts of the homogeneous compound, and assigning rateable values to fill up the hiatus in the taxing statute.

> "In a case of reasonable doubt, (as, with respect, there seems to be here) the construction most beneficial to the subject is to be adopted".

See Oriental Bank Corporation Vs. Wright (1880), 5 A.C. 842, p. 856, where it was observed that the intention to impose a charge on the subject must be shown by clear and unambiguous language. In Pryce Vs. M. C. & R. Companies (1879) 4 A. C. 197, Lord Cairns observed that

> "inasmuch as there was no apriori liability in a subject to pay any particular tax, nor any antecedent relationship between the tax payer, and the taxing authority, no reasoning founded on any supposed relationship of the tax payer and the taxing authority could be brought to bear upon the construction of the Act, and therefore the tax payer had a right to stand upon the literal construction of the words used, whatever might be the consequences".

These and the authorities referred to in the earlier portion of my

of my judgment make it clear, as I think, that unless a subject can be brought within the letter of the law, and not within its spirit, he is freed from liability, as he has the right to the benefit of the doubt. In the present instance, the question, so far as can be gathered, is not merely one of doubt. Section 10(4) being admittedly a factor to be considered both for Incometax and Supertax chargeable in Mysore, it seems to follow that the conjoint effect of the words "subject to the provisions of this chapter" in section 56, and the expressions "all the provisions of this Regulation except" and "so far as may be" in section 58(1), coupled with the non-inclusion of - section 10(4) in the excepted portion in the latter - sections, that for determining the income chargeable to supertax in Mysore, the simple process of excluding the British Indian income from the total income is to be adopted before making the statutory deduction of Rs.50,000/- contemplated by Schedule II. In any case it seems to me that the courts are not to go outside the letter of the law, in construing an enactment of the kind for preventing what may be thought of as a possible evasion of its unexpressed intentions. Unless there is a definite liability imposed by clear terms, no question of obligations can arise. For these reasons I am obliged, on a construction of the relevant provisions of the Regulation, to come to the - conclusion I have arrived at, in regard to the assessability to supertax in Mysore in a case of the kind now under reference.

The answers to the points referred to by the Income-Tax Commissioner must, in these circumstances, await our final decision.

SD/- C. S. DORASWAMI IYER.
J u d g e.

Mr.

Mr. Justice D. K. Rama Rao :- This case raises an important and interesting point which lies in a narrow compass. I do not propose to recapitulate the facts or the several sections of the Regulation which are lucidly and carefully cited by my learned brother and it is sufficient for my purpose to add a few words. I cannot discover any contradictions in the provisions of the Regulation for the levy of the incometax and supertax. At the outset it is as well to refer to the confusion very often caused by the use of expressions like taxable, chargeable, assessable, and liable to tax, for they are applicable to two different stages in calculation. We have to bear in mind the distinction between rating for purposes of taxation and the actual collection of the tax; the one determines the relative rank or position of the assessee and the other the amount of tax to be paid by him on the basis of the rate so fixed. The rate is fixed on the total income while the actual tax to be collected is calculated at that rate upon only the balance of the total income after certain deductions specified in the Regulation, which somewhat vary in details with regard to incometax and supertax. The total income according to sections 2(15) and 16(1) include also the British Indian income but when the tax is actually levied it is deducted as per provision in section 10(4). This is so both for incometax and supertax. The taxing section for incometax is section 3 read with ~~xxxxxxx~~ Schedule 1 and that for supertax is section 55. The only difference for our present consideration between the incometax and supertax is that whereas the entire income is liable to ordinary incometax, the first Rs.50,000/- is exempted from

from supertax which is levied only on the super-income, meaning thereby the excess over the first 50,000/- , rupees.

It follows therefore that a company is liable to be super-taxed when its total income exceeds Rs.50,000/- irrespective of what portion of that income is derived in the Mysore State; in other words even if the income earned in the State is less than Rs. 50,000/- it is prima facie to be taxed provided the total income calculated under section 16(1) exceeds Rs. 50,000/-. Neither of the sections 10(4) and 16(1) is excluded under section 58 and both are operative and have to be enforced. The greater part of the argument on behalf of the company was directed to establish the proposition that since no tax is to be collected on the British Indian income unless it falls within the purview of section 4 it could not be taken into consideration even for determining the rate as that would tantamount to taxing it indirectly. If that is all the contention it is against the clear intention of the Legislature, for the saving clause in section 4 is directed to give full effect to section 16(1) which the Legislature has deliberately added. Admittedly no aid can be derived from the decisions and laws in other countries; each has its own statutes and arrangements. It is not for the courts to find reasons for the policy of the Legislature especially when interpreting the incometax statutes.

> "The Legislature must be intended to mean what it has plainly expressed, and consequently there is no room for construction" - Maxwell on Interpretation of Statutes, 6 Edition, page 6.

Where

Where the words of the section admit of no ambiguity Judges are not entitled to add to or take from them - per Harrington J. in 27 Calcutta 724 (756). The scheme of the Regulation whether in respect of incometax or supertax is repugnant to the theory that British Indian income could not be considered for purposes of rating. After all I cannot understand why we should fight shy of the principle that it is the capacity of the assessee based on his total income that should be the criterion for fixing the rate. The very graduation of rates for incometax, and the high standard of income requisite to give rise to liability for supertax go to indicate that the financial capacity as judged from income is all - important. The higher the income the greater is the rate for incometax and the liability for supertax. If the liability for supertax is not determined by enforcing Section 16(1) a person whose income for instance is - Rs. 45,000/- in Mysore and Rs. 45,000/- in British India could successfully evade supertax both in Mysore and - British India.

Thus, so far as the enforcement of both sections 10(4) and 16(1) are concerned my learned brother and I are of the same opinion; but with regard to the application of Schedule II and Section 10(4) and the conclusion to be arrived at, after carefully considering the matter, with all deference, I feel constrained to defer from him. My endeavour is to remove the conception that supertax will become payable in Mysore only when the Mysore portion of the income exceeds Rs. 50,000/-. Under Schedule II the "excess over Rs. 50,000/- of <u>total income</u>" is liable

to

to supertax. Section 16(1) and Schedule II deal with the total income and section 10(4) separates the State income from British Indian income for purposes of actual taxation. These several stages are very important and should be carefully and strictly followed, and any construction which facilitates the evasion of the statute should be avoided. Now the total income as determined under section 16 is a mixture of both the Mysore and British Indian incomes and while it is in that condition the whole and every part of it is made up of both the Mysore and British Indian incomes. If in this state of totality of the income the provisions of Schedule II are applied, the total income is split up into two portions, (a) the first Rs. 50,000/- of the total income which is exempted from supertax and (b) the balance of the total income, or super income if I may so style it, which is liable to supertax. It is obvious that both the figures (a) and (b) have all the characteristics of the - totality, that is, every part of it comprises both the Mysore and British Indian incomes. The function of section 10(4) commences at this stage and that function is to separate the Mysore portion of the total income from the British Indian income, while Schedule II divides the total income into two parts <u>without</u> any reference to the locality, namely Mysore and British India. It is very important to note this essential difference between the functions of Schedule II and Section 10(4), for though their application has the effect of partitioning the total income, their aim, scope and effects are quite different. Perhaps it may be stated that -

Schedule II

Schedule II and Section 10(4) cut the total income in different planes, one horizontally and the other vertically. In the case of incometax Section 10(4) is applied once for all and hence there is no difficulty, but when it is taken up in connection with supertax some confusion is likely to arise since it will have to be applied both before and after deducting Rs. 50,000/- in accordance with Schedule II.

To take an illustration: If the Mysore income is Rs. 20,000/- and the British Indian Income Rs.80,000/- the total income comes up to one lac. Out of this one lac the first Rs. 50,000/- is first to be deducted in compliance with the imperative direction in Schedule II to find the exeess or super-income before any further deduction or deductions can be thought of. There can be no reason whatever to treat the first Rs. 50,000/- in Schedule II as Mysore income; for it would be equally pertinent for the Crown to contend that the whole of the said first Rs. 50,000/- is to be treated as the British Indian income alone. As explained above, the total income and every part of it is made up of both kinds of income, so that in every unit of coin in one lac as well as in the excess or super-income of Rs. 50,000/-, one-fifth/ portion is Mysore income four-fifth's British Indian income. The function of Section 10(4) is to find out the value of the Mysore portion of the super-income which is liable to supertax; that portion obviously is one-fifth of Rs. 50,000/- or Rs. 10,000/-. In British India also, under similar conditions supertax would be liable on four-fifths of Rs. 50,000/- or Rs. 40,000/- The total amount of super-tax thus levied in both the countries put together would be only

be only on the excess contemplated in Schedule II.

The principles seem to be clear. Whatever the reasons or policy may be, the rate of incometax or super-tax is determined on the capacity of the assessee as judged from his total income including British Indian income, but actual collection is made only on the Mysore portion after deducting the British Indian portion. Now such a deduction can be made only once, and not more than once merely on the score of references made to deductions in different parts of the Regulation. The object is not to tax the British Indian portion and thereby to obviate any hardship from the probable double taxation by levying the tax both in Mysore and British India, but it is not meant that the same British Indian income should be deducted more than once in different forms. Rs. 50,000/- referred to in Schedule II is not an arbitrary figure independent of the total income, but it is its first portion; that being so there can be no reason to deduct the said portion once again from the excess or balance.

This appears to me to be the only possible and reasonable interpretation that can be given if we are to give effect to the provisions of the Regulation and not evade them. When I suggested my ideas to my learned brother I might have safely dispensed with the word equitable, for in my opinion there is no application of any rule of equity in its technical sense in fact if equity is applied at all in this case by my interpretation I cannot see how it is not in favour of the subject, for the whole of Rs. 50,000/- might as well be

treated as

treated as the British Indian income if the opposite contention is to be pressed. The language of the Regulation is palin and unambiguous for Schedule II clearly makes the excess over Rs. 50,000/- chargeable with supertax. Deductions are permissible only to the extent authorised and no more. While we cannot tax the subject beyond the express provisions we cannot also "whittle down" the tax due to the Crown by giving deductions for unauthorised items; both cases are liable to the principle of strict constructions. If we concede, as we must by reason of the express words in Schedule II, that Rs.50,000/- is part of the total income, and if we further concede that the said portion of the total income includes British Indian income, then there can be no ground whatever to deduct the British Indian income in its entirety from the balance left. The total income is a homogeneous compound of both the incomes, and if section 10(4) is to be enforced the separation of the two incomes thereunder can be possible only by fixing their values in the whole as well as in the parts only as explained above. The logical consequences, in my opinion, must necessarily lead to the result arrived at by me and there seems to be no escape from it. .....

If as I said above the wording of the enactment is plain and unambiguous it is not necessary to seek for the object and intention of the Legislature by consideration of matters outside the section itself - Sir John Edge C.J. in Indian Law Reports 16 Allahabad 136(152). When 'the words of the two subsections were unambiguous' the court felt itself bound to give effect to them - 24 Madras 195 (199). .....

"To carry

To carry out effectually the object of a statute it must be so construed as to defeat all attempts to do or to avoid in an indirect or circuitous manner that which it has prohibited or enjoined". Maxwell, page 207.

"The courts are to give the statute a reasonable construction. They will not readily presume, out of respect and duty to the lawgiver, that any very unjust or absurd consequence was within the contemplation of the law. But if it should happen to be too palpable in its direction to admit of but one construction, there is no doubt, in the English Law, as to the binding efficacy of the statute. The will of the Legislature is the supreme law of the land, and demands perfect obedience". - Ibid, p. 460.

In 8 Mysore Law Reports p. 60 the same rule of construction was enunciated by the esteemed Judges, C.G. Plumer, C.J., and A. Ramachandra Iyer, J, who observed

"So construed, the provisions of ..... would be completely nullified and the Legislature would stand convicted of having perpetrated the manifest absurdity of having contradicted in one breath, what it had asserted in the previous breath. It is clear that we should not be justified in applying such a construction, if we could find any other fair and reasonable construction which will reconcile the provisions of ..... with the provisions of .....".

The

The alternative interpretation of giving deduction to the entire British Indian income in addition to the first Rs. 50,000/- of Schedule II was not mooted by the learned counsel for the Company, presumably, as I think because it could not be maintained. I am unable to agree with the learned Government Advocate that the non-inclusion of section 10(4) in section 58 is an omission or a weakness in the case for the Crown. It seems to me that Section 10(4) had necessarily to be - omitted in section 58 for the simple reason that neither kind of tax can be collected (as opposed to rating) on the British Indian income as such, unless it falls within the purview of section 4. In my opinion the construction suggested is defective inasmuch as it fails to give effect to the charging provisions in Section 55 and Schedule II and allows deductions beyond what the Regulation authorises. No flaws have been pointed out in the decision I have arrived at, which, while it prevents an individual liable to supertax in Mysore and British India under similar conditions (as it really is at present) from evading payments in both the countries, also extends to him the requisite protection against double taxation; if this is so, perhaps there may be no need for any reciprocal arrangement on the point.

Answers to the questions of the Referring Officer can be formulated only after the matter is finally settled.

Sd/- D. K. Rama Rao.

J U D G E.

CSN.

ORDER OF REFERENCE

to the

F U L L B E N C H.

There being a difference of opinion between us, on a material point of law, arising out of this reference, in regard to the construction of the provisions of the Mysore Income Tax Regulation relating to Supertax, we refer the matter in difference, to the Full Bench under Section 15(3) of the Mysore Chief ourt Regulation I of 1884.

SD/- C. S. Doraswami Iyer,
J U D G E.

SD/- D. K. Rama Rao,
J U D G E.

"C o p y"

Government Advocate.

CSN.

32791

In reply please refer to
No. 557

Tel. Address
"JURIST," Bangalore.

OFFICE OF THE ~~GOVERNMENT~~ ADVOCATE IN MYSORE

Bangalore 30th January 1926.

DIARY NO. 2819

FROM

K. SHANKARANARAYANA RAO, ESQ, M.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE

GENL. & REV. SECTT. Bg. 1 FEB 1926 R. D. SECTION.

The Secretary to the Government
of H. H. The Maharaja of Mysore,
Revenue Department, BANGALORE.

SIR,

In continuation of this office letter No. 491 dated the 9th January 1926, I have the honour to forward herewith for the information of Government, copies of the orders passed by the Chief Court in Civil Referred Cases Nos.9, 10 and 11 of 1924-25 on their file (Income-Tax Cases Re: the assessment of (1) The Central India Spinning, Weaving & Manufacturing Co., Bombay, (2) The Swadeshi Mills Ltd., Bombay, and (3) The Tata Mills Ltd., Bombay,).

I have the honor to be,

Sir,

Your most obedient servant,

Government Advocate.

CSN.

CIVIL REFERRED CASE No. 9 of 1924-25.

(This is in continuation of the pages already sent.)

Tuesday, the 19th day of January 1926.

Present.

Mr. Justice C. S. Doraswami Iyer

and

Mr. Justice D. K. Rama Rao.

This Civil Referred Case coming on for final disposal on Monday, the 18th day of January 1926, the court pronounced the following :-

O r d e r.

In accordance with the opinion of the Full Bench, the reference of the Income-Tax Commissioner will be answered thus :-

(a) In the case of a business carried on partly in British India and partly in Mysore, supertax is chargeable only on the assessable income in Mysore;

(b) and (c) - The cumulative effect is that which is indicated in the judgments of the majority of the Judges of the Full Bench. From the total income as computed in accordance with Section 16(1), the statutory deduction of Rs.50,000/- has to be made, and on so much of the balance as may represent the actual income derived in Mysore and taxable under section 58(1), supertx

is

is leviable.

(d) In view of the opinion expressed in the Judgments and of the answers giveh above in regard to questions (a), (b) and (c), this question calls for no specific answer.

We make no order as to the costs of this reference.

SD/- C. S. DORASWAMI IYER,
J u d g e.

SD/- D. K. RAMA RAO,
J u d g e.

"C o p y"

Government Advocate.

CSN.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Tuesday, the 19th day of January 1926.

Present.

Mr. Justice C.S. Doraswami Iyer

and

Mr. Justice D.K. Rama Rao.

CIVIL REFERRED CASE No. 10 of 1924 -1925.

In the matter of a reference under Section 66(2) of the Mysore Incometax Regulation V of 1923, by the Commissioner of Income Tax in Mysore (received with his No. 668 of 1924-25, dated 12th June 1925) submitting for the decision of this court a statement of the case relating to the assessment of the income of the Swadeshi Mills Company Ltd., Bombay, to supertax in Mysore for the year 1923-24.

O R D E R.

The assessee in this case is the Swadeshi Mills Co., Ltd., Bombay and the question raised, in this reference, by the Income-Tax Commissioner, so far as super-tax is concerned, are the same as those set out in (a), (b) and (c) of paragraph 2 of the judgment of C. S. Doraswami Iyer, J. in Civil Referred Case No. 9 of 1924-25.

Additionally the Commissioner has referred also another question relating to the income-tax payable by the assessee, which runs as follows:--

"Whether a person whose assessable profits in Mysore are computed under Rule 33 of the Mysore Income-Tax Rules, 1923, by following the rule

of

of proportion can claim to set off the loss if any, incurred in a portion of the business carried on in Mysore against the incom so fixed, Mysore income is to Mysore turnover, as total income is to total turnover".

The questions relating to super-tax are dealt with in our judgments in Civil Referred Case No. 9 and for the reasons therein stated our answers are the same as those recorded in that judgment.

In regard to the question of income-tax, the Commissioner is of opinion that the point raised in the reference is one of fact, but as it challenges the principle on which the assessable income is to be determined and assessment fixed, we are inclined to treat it as involving a question of law.

The facts shortly stated are these:

In the return submitted by the Company, the amount of profits assessable to income-tax in Mysore was given as Rs. 12,371-0-0 and that was arrived at, by deducting Rs. 7140-10-2, representing the loss incurred by the Company in their ginning factory at Davangere, from the total proportionate profit of Rs.19511-10-2, assessable on the turnover-percentage-principle by multiplying the total profits earned in British India and Mysore, by the turnover in Mysore, and dividing the product by the total turnover in both areas. In the calculation of the total profits,

the profit

the profit and loss accrued or suffered in Mysore have been included. The assessing officer fixed the Mysore profits on which income-tax was payable by the Company in Mysore at Rs.19,511-10-2, on the turnover method refusing to set off the loss of Rs.7140-12-2 sustained by the Davangere Factory on two grounds:--

(1) That the Davangere factory was intended to feed the Mills at Bombay,

and (2) that the total profits taken as the basis of assessment in British India, the loss aforesaid has been taken into account,

and this decision was confirmed in appeal by the Income-Tax Commissioner.

Rule 33, printed on page 77 of the Mysore Income-Tax Manual, prescribes the mode by which the amount of income, profits or gains accruing or arising to non-residents from or through business connection in Mysore should, for purposes of income-tax, be calculated, in case the actual amount of such income profits or gains cannot be ascertained. In the present case the assessee furnished for the year of assessment a return from which the assessable income in Mysore could not be separately ascertained except by having recourse to the method prescribed in Rule 33. If the actual income from the Mysore portion of the business was separately shown or could be ascertained from the books of the assessee, then the assessable income, for the levy of Mysore income-tax might be arrived at by subtracting the allowances and deductions permissible under the Regulation, and under section 24, the assessee will be entitled to have

to have the amount of loss set off in computing the income. But where the Mysore portion of the income, as well as the Mysore portion of the loss are both taken into account in computing the total all India income, and the assessing officer is driven to adopt one of the modes prescribed in Rule 33, for determining how the profits in Mysore should, in the circumstances be calculated, and in his discretion he fixes as the assessable income in Mysore a percentage of the turnover of the business done in Mysore, we do not see how the assessing officer can be said to have acted contrary to law, or in an arbitrary or unjust manner. In our opinion, the set off claimed by the assessee need not necessarily be made, consistently with the provisions of the Regulation, in the mode of computation adopted by the assessing officer, for fixing the assessable income in Mysore, and we answer the reference accordingly.

We make no order as to the costs of this reference.

SD/- C. S. DORASWAMI IYER,
J u d g e.

SD/- D. K. RAMA RAO,
J u d g e.

"C o p y"

Government Advocate.

CSN.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Tuesday, the 19th day of January 1926.

Present.

Mr. Justice C.S. Doraswami Iyer

and

Mr. Justice D. K. Rama Rao.

CIVIL REFERRED CASE No. 11 of 1924-25.

In the matter of a reference under Section 66(2) of the Mysore Incometax Regulation V of 1923, by the Commissioner of Income-Tax in Mysore (received with his No. C. 667 of 1924-25, dated 13th June 1925) submitting for the decision of this court a statement of the case relating to the assessment of the income of the Tata Mills, Ltd., Bombay, to supertax in Mysore for the year 1923-24.

O R D E R.

The assessee in this case is the Tata Mills, Ltd., Bombay, and the questions propounded in this reference by the Incometax Commissioner are the same as those set out in (a), (b) and (c) in para 2 of the judgment of Mr. C.S. Doraswami Iyer, J. in Civil Referred Case No. 9 of 1924-25. These questions are dealt with in our judgment in that reference, and for the reasons ~~xxxxxx~~ therein stated our answers are the same as those recorded therein. We make no order as to the costs of this reference.

SD/- C. S. DORASWAMI IYER,
J u d g e.

SD/- D. K. RAMA RAO,
J u d g e.

"C o p y"

Government Advocate.

CSN.

32943 9.T. 13.24 48

A.Dis 2/16 25-26

OFFICE OF THE COMMISSIONER OF INCOME-TAX IN MYSORE.

Bangalore, 1st February *192* 6-

COPY NO. 2812

FROM

Sri V. Sv. R. Thyagaraja Iyer, Esq., M.A.,

COMMISSIONER OF INCOME-TAX IN MYSORE.

21 FEB 1926

To

Q. D. SECTION.

Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to the Government of Mysore,
Revenue Department, Bangalore.

Sir,

In continuation of this office letter No. C.206/25-26 dated the 12th September 1925, I have the honour to forward herewith copies of the final orders of the Chief Court on the references made at the instance of (1) The Swadesi Mills, Co., Ltd., Bombay, (2) The Tata Mills, Ltd., Bombay and (3) The Central India Spinning, Weaving and Manufacturing Co., Ltds., re: the question of interpretation of the expression "Total Income" in section 16(1) of the Mysore Income Tax Regulation V of 1923.

2. Unless otherwise instructed, the decision of the

the Chief Court will be followed in the disposal of similar Super Tax appeals pending with me.

I have the honour to be,
Sir,
Your most obedient servant,

Commissioner of Income Tax.

CONFIDENTIAL.

BUDGET AND RESOURCE.

OFFICE OF THE COMPTROLLER TO THE GOVT. OF H. H. THE MAHARAJA OF MYSORE,

Dated Bangalore, the 16. 1. 1926.

No._____
B. & R.

RESOURCE ESTIMATE.

FOR THE MONTHS OF January and February 1926.

GENERAL ACCOUNT.

	Current month	Next month	Third month
Opening Balance ..	51.44	49.19	65.67
Receipts—			
Revenue (Sec. A.)	28.43	39.70	40.00
Debt Heads (Sec. C)	15.00	1.00	
Total ..	94.87	89.89	105.67
Out-goings—			
Expenditure (Sec B.)	45.68	24.22	40.00
Debt Heads (Sec. C.)	..		10.00
Total ...	45.68	24.22	50.00
Closing Balance ...	49.19	65.67	55.67
Minimum Balance	50.00	50.00	
Surplus	..	15.67	
Deficiency	81		

GENERAL REVIEW.

Revenue.

Expenditure.

Debt Heads.

Third month's transactions.

Resource operations and prospects.

Comptroller.

To—The Secretary to the Government of His Highness the Maharaja of Mysore,
Financial Department.

CURRENT AND NEXT MONTH.

A. REVENUE	Actuals, last year		Budget portion		Latest estimates, current year		Remarks
	Current month Jan 25	Next month Feb 25	Current month	Next month	Current month Jan 26	Next month Feb 26	
Principal Heads of Revenue—							
Land Revenue	1.46	20.34			1.45	20.40	
Forest—(a) Supplies to sandal oil Factories	1.92	76			1.00	·	
(*b*) Other Revenue ...					1.00	1.00	
Excise	5.83	5.56			6.00	5.50	
Income and Miscellaneous taxes ..	5.77	5.35			6.00	3.00	
Stamps	1.65	1.46			1.60	1.50	
Registration	27	22			25	25	
Surplus Revenue of Assigned Tract ...	7.00				4.34	..	
Mining Revenue	1.01	1.14			1.00	1.00	
Interest	88	16			54	1.30	
~~Cauvery Power Scheme~~ Krishna Raja Sagara + Hydro Electric works (Net)	2.89	2.95			2.75	2.75	
Railways .. (Net) ..	1.40	2.11			1.50	2.00	
~~*Sandal Oil Factory*~~ (~~Net~~) ...							
Other Revenue	−1.86	92			1.00	1.00	
Total Revenue ..	28.22	40.97			28.43	39.70	
Capital Receipts not credited to Revenue	31	66			..	..	
B. EXPENDITURE.							
Palace	3.50	1.50			3.50	1.50	
Subsidy	17.50	..			17.50	..	
Public Works	1.92	1.79			2.00	2.00	
Capital other than Railways ..	4.37	1.73			4.00	1.50	
~~*Railways—Revenue*~~							
Railways—Capital	1.56	3.12			2.18	2.22	
Other Expenditure	16.54	17.44			16.50	17.00	
Total Expenditure ..	45.39	25.58			45.68	24.22	
C. DEBT HEADS—(Net transactions).							
Investment Account	+13.47	...			+15.00	..	
Debt	..	...			..	..	
Unfunded Debt	−1.50	+ 4			..	...	
Local and other Funds	+ 1.65	+ 7.62			..	+1.00	
Deposits, Advances and Loans Etc ...	+ 2.37	+ 1.78			..	..	
Account with the Accountant-General Suspense a/c	+ 2.65	+ 2.62			..	..	
Remittances	− 29	+ 61			..	..	
Total Debt Heads (Net)...	+18.35	+12.67			+15.00	+1.00	

BSG
16/1/26

PROGRESSIVE FIGURES.

	Actuals up to month before last	Preliminary actuals, last month	Estimates		Progressive total to end of next month	Budget portion	Remarks
			Current month	Next month			
A. REVENUE.							
Principal Heads of Revenue—							
Land Revenue							
Forest—(*a*) Supplies to Sandal Oil Factories							
(*b*) Other Revenue ...							
Excise							
Income and Miscellaneous taxes ..							
Stamps							
Registration							
Surplus Revenue of Assigned Tract ...							
Mining Revenue							
Interest							
Cauvery Power Scheme (Net) ...							
Railways .. (Net) ...							
Sandal Oil Factory (Net) ...							
Other Revenue							
Total Revenue ...							
B. EXPENDITURE.							
Palace							
Subsidy							
Public Works							
Capital other than Railways ...							
Railways—Revenue							
Railways—Capital							
Other Expenditure							
Total Expenditure ...							
C. DEBT HEADS—(Net transactions)							
Investment Account							
Debt							
Unfunded Debt							
Local and other Funds							
Deposits, Advances and Loans (Etc.) ...							
Account with the Accountant-General Madras							
Remittances							
Total Debt Heads ...							

WD 2570—GBP—100—11-7-24.

No 1362 dated 16-1-26
Books

4624

RESOURCE ESTIMATE FOR JANUARY 1926 & FEBRUARY 1926

The cash balance on 1st February 1926 is estimated to stand at 49.19 lakhs after providing for the following heavy payments:-

1st instalment of Subsidy	...	17.50
Capital Expenditure		
Iron Works £ 6,000/-		
Electrical Department £ 24,000/-		
£ 30,000/		
at 1sh 6 3/16 d	...	4.00
		21.50

The actual cash balances on 1st February 1925 and 1st February 1924 were Rs 55 lakhs and Rs 56 lakhs respectively, and it is deemed necessary to provide therefore for a minimum balance of Rs 50/- lakhs on 1st February 1926. The estimates as now made up work up to nearly this balance. The estimates include the following special receipts

(1) Investments		
Sale of Government of India bonds	... ...	10 lakhs
Fixed Deposit with the Bank of Mysore due at the end of this month	...	5 lakhs
(2) Income and ~~Surplus~~ Super Taxes	... ...	6 lakhs
(3) Surplus Revenue of Assigned Tract	... ...	4.34 lakhs
		25.34

(1) Investments - Government of India 6% 1926 bonds for Rs 5 lakhs were sold at the beginning of this month through the Bank of Mysore, and the same paper for a similar amount of Rs 5 lakhs will be arranged to be sold before the end of this month to meet the payment of subsidy due on the 31st instant.

The Bank has agreed to the adjustment of Rs 3 & this has been intimated. Complied

2. As regards 2 the Res Rep is requested to state if the sum of Rs 6 lakhs will be fully realised this month.

3. I hope the sale of balance of 5 lakhs will not be necessary at any rate till the first week of February. It is best to avoid further sale, if possible. If there is no alternative we may arrange for the necessary overdraft for a few days.

Hebes) 1st ques 20-1-26 & 2 Opts put up for appl By 20/1

Hebes) Done 22/1/26

(2) Income and Super Taxes -

The Deputy Commissioner of Income Tax has reported that a sum of Rs 1.55 lakhs has already been realised and Rs 4½ lakhs will further be realised before the close of this month from the Mining Companies on account of Income and Super Taxes. Credit has been taken ~~from~~ for this amount under Receipts.

(3) Surplus Revenue of Assigned Tract

No definite orders have been communicated to me on my report for last month stating that the amount provided for in the Budget Estimate for the current year on this account viz., Rs 4.34 lakhs will be taken as adjustment towards the payment of the subsidy as usual. This amount has been taken to credit under the Receipts for January 1926.

(4) The receipts for January 1926 are estimated at 28.43 lakhs. The receipts on the above two accounts amount to about Rs 9 lakhs.

(5) If any portion of these is not realisable, there will be difficulty to that extent in meeting the payment of the first instalment of subsidy and special arrangements will have to be made by obtaining temporary overdraft ~~in kkm~~ with one of the Banks or a further sale of paper to the minimum extent required.

I therefore request very early orders in respect of these receipts.

Estimate for February 1926

The cash balance at the close of this month is estimated to stand at 65.67 lakhs. As the Revenue collections are usually remitted to Bangalore at the close of the month, it would not be possible to make any investments in the month.

The portion relating to progressive figures on page 4 of the estimate has not been filled up as the actuals to end of November 1925 and the preliminary accounts for December 1925 required for filling up the 1st two columns of the Statement are not yet ready.

J Aiyangar

Comptroller.

16.1.26

CV

I. T. 601

3221/ar

OFFICE OF THE COMMISSIONER OF INCOME-TAX
IN MYSORE.

No...D.2.Dis. 238 / 25-26

ENC.

Bangalore,..2nd March.....192 6.

6528

Dear Sir

In continuation of my letter D.O. No.C. 485/25-26 dated the 26th January 1926, I write to inform you that a sum of Rs. 52,615 will have to be refunded in addition to Rs.29,379 which has to be reduced from the Demand if the decision of the Chief Court in the matter of the assessment of the income of companies doing business both in British/Indi and in Mysore to super-tax is followed.

Yours sincerely,

3/3/26

B. Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to the Government of Mysore,
Revenue Department, Bangalore.

I. T. 69] VERY URGENT.

In reply refer to
No. C. 485
Enc.

OFFICE OF THE COMMISSIONER OF INCOME-TAX
IN MYSORE,

Bangalore.....26th January.....192 6.

DIARY NO. 2752
19 — 19
Enc

Dear Sir,

With reference to para 1 of your D.O. letter No.Fl. 4062 dated the 23rd instant, I write to inform you that the first instalment of Income Tax viz., Rs 2,34,411-13-6 and of Super Tax viz., Rs 2,29,707-12-0 due for the current year from the Gold Mining Companies has been paid into the Imperial Bank of India, Bangalore, on the 21st instant

2. Information as regards the refunds that will have to be made on account of the recent decision of the Chief Court re: the interpretation of 'Total Income' will be called for from the Deputy Commissioners and will be furnished as soon as their replies are received in this office. Approximately the refund amount to Rs 40,000/- or so.

Yours sincerely,

B. Srinivasa Iyengar, Esqr., B.A., B.L.;
Secretary to the Government of Mysore,
Revenue Department, Bangalore.

DEWAN'S OFFICE.
RECD. ON 29 JAN. 1926
R. No. 5625

32805

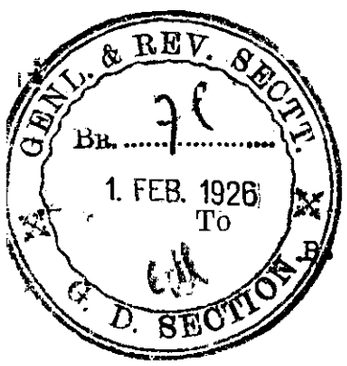
Ex Dis— No. 38/25-26
Encs.

OFFICE OF THE DEPUTY COMMISSIONER OF INCOMETAX,
KOLAR DISTRICT.

Dated Kolar, the...30th Jan....192 6.

2806

FROM



S. HIRIANNAIYA, ESQ., M.A., B.L.,
DEPUTY COMMISSIONER OF INCOMETAX,
KOLAR DISTRICT.

To

B. Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to Government of M y s o r e,
R e v e n u e Department, Bangalore.

SIR,

With reference to your memo No:Fl.4064 dated 23-1-26, forwarding copy of your D.O. letter No:Fl.4062 of the same date to the Commissioner of Incometax in Mysore, Bangalore, I have the honor to state that though the order of assessment was passed on the 17th December 1925, yet the demand notice was served on or about the 25th idem. The moiety of tax (Incometax plus super taxes) was therefore due on the 25th of this month, but the amount Viz: Rs 4,64,119-9-6 was remitted to the Imperial Bank of India, Bangalore, on the 21st instant, alone to the credit of Dewan of Mysore and the fact intimated to the Comptroller and the Commissioner of Incometax, Bangalore, with this office No:I.C.248 dated 23-1-26. The remaining amount is due on the 25th of February 1926.

I have thehonor to be,
S i r,
Your most obedient servant,

Ramachandra Rao

For Dy. Comr. of Incometax,
Kolar District.

Submitted. No action on this is necessary. It is only for V,V.R.2.
Filed in 30/1. connected file

G. R [VI-G-32] B50—WD 0527

SUBJECT

Diary No of letter replied to

General and Revenue Secretariat

( )

, the *192* .

Date of issue 23-1-26

Signed by M.N.K. Bn By.Sec.A

Section

File No.

Serial No.

No. H 1003/Gen'l

To

I. Sat

Dear Sir

With reference to the several points raised in the resource report for January & Feb. 1926 forwarded with your letter no 1362 Bom/s dated 16.1.26 I am directed to state as follows:-

~~Regarding you have been authorised to deduct a sum~~ The Residency has agreed to the adjustment by the Surplus Revenue the Assigned Trade to the extent of H. 34 lakhs This has already been communicated to you

Regarding the receipt of Part of the Income & Super Tax due by the Mining Company it is believed that these amounts may

over

be ~~kept~~ counted on being received
by the end of this month. The Commissioner
of Income Tax has been addressed in
this matter & a copy of the letter to him
is enclosed for your information

It is hoped that in these circumstances
the sale of the balance of Shares
will not be necessary. But at any rate
till the first week of February as it is
best to avoid further sale if possible
If there is no alternative we shall
arrange for the necessary overdraft
for a few days —

~~Thanking~~ Yours Sincerely

Srinivasa Iyengar

To
D. Sahasranama Chetty Esq Bar-at-Law

G · VI–G-32]

B50—WD 0527

SUBJECT

Dicy No. of letter replied to

Section

File No.

Serial No.

General and Revenue Secretariat

)

, the 192 .

D.G No. 71062

Date of issue 23.1.26

Signed by J.M.B.S.

To

Dear Sir

I am directed also to enquire re 'refunds' due on account of the recent adverse decision of the Chief Court re- the interpretation of total income agregate are likely to be amounts.

An immediate reply is requested.

Yours faithfully

B

for Secy

To

V.R. Thyagarajah Esq M.A

Commissioner of Income Tax

Copy to Comptroller

71062/64/ dated 23.1.26

Copy of Para 1. is forwarded to the D.C. Kelle for information -

over

I am directed to refer you to H.R. Your letter no D. dis 187/rs-26 d. 23.12.25 intimating that the ~~names~~ R.g.7 mining Companies have been assessed ~~duty~~ ~~tax~~ Income & Super Tax of amounting to Rs 9,28,235 on 17.12.25 & to enquire if the proceeds due on 17.1.26 has been paid not & am to enquire when a receipt may be expected.

SNS

In the High Court of Judicature at Bangalore.

Tuesday, the 18th day of January 1955.

Present.

Mr. Justice V. S. Doreswami Iyer,

and

Mr. Justice R. N. Narasimha Rao.

CIVIL REFERENCE No. 11 of 1954 - 55.

In the matter of a reference under section 66(1) of the Mysore Income-tax Act, 1953, by the Commissioner of Income-tax in Mysore (received with his No.C.7 of 1954-55, dated 18th June 1954) submitting for the decision of this Court a statement of the case relating to the assessment of the income of the Kolar Mills, Ltd., Bombay, to Mysore Income-tax in Mysore for the year 1950-51.

J U D G M E N T.

The assessee in this case is the Kolar Mills, Ltd., Bombay, and the questions proposed in this reference by the Commissioner are the same as those set out in (a), (b) and (c) in para 2 of the judgment of Mr. V. S. Doreswami Iyer, J. in Civil Referred Case No. 9 of 1954-55. These questions are dealt with in our judgment in that reference, and for the reasons therein stated our answers are the same as those recorded therein. We make no order as to the costs of this reference.

Sd/ V. S. Doreswami Iyer,

J U D G E.

Sd/ R. N. Narasimha Rao,

J U D G E.

"COPY"

For Commissioner of Income-tax in Mysore.

AuS.

assessment for supertax, on the ground that the taxable income i its business in the State is less than ₹ 50,000/-. On the appli tion of the assessee the Commissioner has made this reference raising the following questions for decision:-

(a) Whether the effect of Section 58(1) of the Mysore Income Regulation V of 1923 is to make Section 10(4) applicable to the charging of Supertax without any qualification?

(b) If the above question is answered in the affirmatice, what is the cumulative effect of Sections 55, 56, and 58(1) of the Regulation, and is it such as to require of the successive deduction from the total income (as defined in Section 16(1) of the statutory allowance of ₹ 50,000/- and of the British Indianincome'

(c) Whether only the amount left over after the above deducti is assessable to supertax?

(d) What is the effect of the words " save as hereinafter provided" in Section 4(1), and of "so far as may be" in Section 58(1), and do they permit of the interpretation put by me on Secti 16(1) and 55, 56 and 58 in the decision now objected to by the petitioners?

3. For a proper understanding of the questions raised we have to consider the provisions of the Regulation bearing on the subjec of assessment, not only to supertax but to income tax also. Unde Sections 3 and 4, incometax has to be charged at the rate or rates specified in Schedule I, in accordance with and subject to the provisions of the Regulations on all income, profits or gains as prescribed or comprised in Section 6, accruing or arising or received in Mysore. Section 6 enumerates the heads of income so

exemptions in respect of Life Insurance pre
of similar kind (section 15). The income comput
with the provisions of the above sections forms the ba
tion and is generally known as taxable income, i.e., inco
able to income-tax.

4. This taxable income is, however, different from th
income within the meaning of section 2(15), which is to be
ted in the manner laid down in Section 16 in order t
liability of a person to taxation (i.e., whether his to
amounts to a minimum of Rs. 2,400/-) and the rate at whic
is to be charged under Schedule I. In such total income
included among other deductions, any sum representing t
or gains in British India of/~~business~~ a business carri
in British India and Mysore, which under sectio
chargeable to income-tax in Mysore, that is
sum is not actually subject to income-tax here,
ded for the purpose of determining liabilit
rate to be charged on the taxable incom

5. This distinction between the ta
income has to be borne in mind in cons
visions of Regulation V of 1923, in
cation to supertax. Under section
total income of the previous year
II. Under section 56, the tot
shall, subject to the provision
as assessed for purposes of inc
that while the total income co
is the total income for super
to supertax is under sectio
the provisions of the Reg
provisoes, sub sections
among those exempte

Section 10, and the provisions of this sub section have therefore be taken into account in computing the amount liable to supertax under our Regulation. As the Sub section allows deduction of profits or gains accruing on transactions in British India in respect of a business carried on there as well as in Mysore, supertax is assessable in Mysore, though the liability to such tax is dependent on the total income of the business derived both in British Indian and in Mysore as computed in the manner aforesaid. If such total income exceeds Rs. 50,000/- supertax is leviable on such excess income as per schedule II read with section 55, reduced by the amount representing the profits or gains of the portion of the business carried on in British India in conformity with the provisions of Section 58(1), as explained above. Such a construction is consistent with the provisions of section 4(2) and section 42(1), and the reciprocal arrangement made between the Government of India and the Government of Mysore for affording relief from double income-tax, in the case of assessees carrying on business both in British India and in the Mysore State. Section 4(2) applies to profits or gains accruing or arising without Mysore to a person residing within, and section 42(2) to profits or gains accruing or arising through or from any business connection in Mysore to a person residing without In either case such profits or gains are to be deemed as accruing or arising in Mysore, and are chargeable to incometax here. The reciprocal arrangement referred to above is given effect to in Mysore by the provision contained in section 10(4) of the Regulatio and in British India by special instructions of the Government of India conveyed in their letter of the Financial Department, No.2134 dated 4-6-1934, embodied in paragraph 14, p, 56 of the Mysore Income Tax manual. The terms of this arrangement so embodied coupled with the absence of any specific provision in the returns prescribed under section 22 of the Regulation for showing the deductions of earnings in British India, of a business carried on partly in

partly here would seem to lend colour to the contention that section 10(4) was not intended to apply to residents in British India carrying on such business.

7. Mr. L.A. Govindaraghava Iyer who argued the case with much ability and clearness, goes one step further, and urges that section 10(4) was designed merely for ascertaining the income of a business in Mysore carried on partly here and partly in British India, by the simple process of excluding the amount of profits and gains appearing to the assessing officer to be due to transactions in British India. Such a contruction, he points out, will be in accord with sections 3 and 4 of the Regulation, under which according to the decision, cited in Ali Ina vs. Income Tax Commissioner(85 Indian Cases 164(Patna)), and relied on my learned advocate, the income earned outside the taxing state shall not be chargeable in that state unless (1) it is received within that state, or is deemed to accrue or arise or to be received therein or (2) unless it constitutes the profits or gains of a business actually received in that state within the meaning of section 4(2). As, in the present case, the profits or gains of the assessee in so far as they relate to the transactions in British India could not be deemed to have accrued or arisen in Mysore, nor received there he urges, that they would not be taken into account in computing the total income for assessment purposes in Mysore. Whatever may be the force of this line of arument in its application to the provisions of the British Indian Income Tax Act, it cannot prevail, in view of the expressxim provisions of Section 16(1) of the Mysore Income Tax Regulation V of 1923, wherein it is expressly stated that in the case of profits or gains in British India of a business carried on both there and in Mysore, the deduction admissible under Section 10(4), in respect of the earnings in British India, shall be included for computing the total income in Mysore. It may be observed that although in section 9(3) of the previous year Regulation of 1920,

there was a principle initial in terms with that of section 1, of the present legislation, there was not an exemption section ( ) of that legislation, as there is in section 1 (1) of the present legislation, any provision for including the deduction of tax, in determining the total income. This change in the language of the present legislation, to be construed as exempting a change of intention on the part of the legislature in this respect. In construing a taxing statute the court has to give effect to the intention of the legislature as gathered from the language employed, having regard to the context. It is not open to the court to do more "to ascertain the meaning of the act by consideration of equity, justice convenience or the like" - Maxwell on the Interpretation of Statutes (10th ed), page 1, 2 and 3. It is therefore to hold that the exemption is to be restricted, the profits or gains earned in foreign India by a resident partly remitted on there, and partly kept there should be included for the purpose of the total income of the assessee in question.

In this connection the following observations of Lord Sumner in the case of Commissioners of Inland Revenue Vs. Attorney General (1921) 1 K.B. 64 at page 71 may be usefully quoted in this connection:-

"As I understand the principle of all fiscal legislation, it is this. If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the words, construed reasonably, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there is admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute. Here you must simply adhere to the words of the statute.

this principle was explained, in a later case, by Lord Macnaghten in Cape Brandy Syndicate vs. Inland Revenue (1921) 1 K.B. 64, in the following manner:-

" No tax can be imposed on the subject without words in a statute clearly showing an intention to lay a burden on him. If such intention is sufficiently shown, it is not open to a court to say that would be the fairest and most equitable method of levying the tax".

There are also several English and Indian decisions to the same effect. One instance in Willing, Pollock & Co., vs. Secretary of State for India (I.L.R. 1947) it was pointed out that

" the cross section to whether the tax must bring the subject within the letter of the law, otherwise the subject is free however much within the spirit of the law the case may appear to be. There can be no equitable construction admissible in a fiscal statute; the benefit of the doubt is the right of the subject".

In another case Aiken and Co. vs. Collector of Cuttack (I.L.R.) it was remarked that:-

" It is a sound principle that the subject is not to be taxed unless clear words to that effect; and that individuals are all equal against the construction which imposes a burden on the subject".

In our court Phear J. also cited with approval the principle enunciated in the above cases as to the inadmissibility of any equitable construction in a fiscal statute like the income tax legislation. See Bombay High Court reports I.L.R. 7, p.111.

" In view of these well established canons of interpretation, I have to construe the provisions of the income tax legislation, by the language employed in the relevant sections bearing on the subject of importation without regard to equitable considerations or the intention of the legislature in the matter of assessment.

As already stated the total income for exportation is the sum total income arrived at for income purposes less the in-

...ble to exporter has to be fixed having regard to the provisions section ...(1). ...ch has assessable income should be reduced by ...ount of the business profit in British India, and this result ...s from the non-inclusion of section 4(1) among the ...ctions specified in that section. Although the words, section ...) for purposes of ... section and Schedule II would permit of the ... exclusion of ... of the balance into in ... case of ... Rs. ...,000/-, still the non-inclusion of ... section 4(1) in ... tion ...(1) as aforesaid would seem to call for ... exclusion of the whole of the British India income from such ...ource, in computing the total income liable for the levy of export ...y tax. This will practically lead to the result that exporters ... benefit ... in case, only when the ...ource portion of the ...assable income is in excess of Rs.50,000/- and the law will be ...ritten on really such cases.

I ... had the advantage of reading the judgment of my ... brother ... just to deliver, I am still unconvinced as to the ... proposition ... of a non-resident foreigner as to the ... year, the exemption, when such income does not exceed ...,000/-. ... is no provision in the regulation or the rules ... thereunder, so far as I can see, for the adoption of the course ... adopted, or for allocating between British India and ...ource, the ... deduction of Rs.50,000/- referred to in Schedule II, or ... laying the rule of proportion as suggested, for determining ... of ...ource income chargeable to exporters. It is true that ... income as defined in our regulation is, as observed by my ... brother, a heterogeneous compound of both the British India ...ource income, and that is the sum of Rs.50,000/- deductible ... Schedule II, a portion of both these incomes is included, but if we ... follow the ... canons of construction, as I understand ... it is not for us to evolve a scheme for apportioning the profits

" is a clear of reasonable doubt, (or, with respect, there is to be) the constructive trust implied to the subject to [illegible]

The original case concerned the right (1...), [illegible] this ... there it was observed that the intention to impose a charge on the subject must be shown by clear and unambiguous language. In re ... No. ... 3 Lancashire (1...) 1 ch.d. 17, Lord Cairns observed [illegible]

" intended to limit ... a priori liability in a subject to ... by [illegible] ... by subsequent relief ... his title to the ... property, and ... security ... would be by imposed relationship of ... and the ... security could be brought to bear upon the ... duction of the ... at ... neither the ... property had a right to ... the literal construction of ... act, ... literally ... his ... property ... that ... right to ... [illegible] ... subject ... of the ... property ... that ... right to ... [illegible] ...

Here, ... property ... referred to ... [illegible] ... property ... [illegible] ... [illegible] ... [illegible]

In any case it seems to me that the courts are not to a[redacted] letter of the law, in construing an enactment of the kin[redacted] that may be thought of as a possible evasion of its int[redacted] tentions. Unless there is a definite liability impos[redacted] o[redacted]r terms, no question of obligations can arise. For these reasons I obliged, on a construction of the revelent provisions of the regul tion, to come to the conclusion I have arrived at, in regard to th assessability to supertax in Madras in a case of the kind now und[redacted] refere ce.

The answers to the points referred to by the Income tax must, in those circumstances, await our final decision.

Sd/ C. S. Doraiswami Iyer,

J U D G E.

Mr. Justice V. K. Rama Rao:- This case raises an important and in teresting point which lies in a narrow compass. I do not propose recapitulate the facts or the several sections of the Regulation which are lucidly and carefully cited by my learned brother and it sufficient for my purpose to add a few words. I cannot discover a contridictions in the provisions of the Regulation for the leavy of the incometax and supertax. At the outset it is as well to refer the confucion very often caused by the use of expressions like taxa chargeable, assessable, and liable to tax, for they are applicable two different stages in calculation. We have to bear in mind the distinction between rating for purposes of taxation and the actual collection of the tax; the one determines the relative rank or posi- tion of the assessee and the other the amount of tax to be paid by on the basis of the rate so fixed. The rate is fixed on the total income while the actual tax to be collected is calculated at that r upon only the balance of the total income after certain deductions specified in the Regulation which somewhat vary in details with re

to incometax and supertax. The total income according to sections 2(15) and 10(1) include also the British India income but when the tax is actually levied it is deducted as per provision in Section 10(4). This is so both for incometax and supertax. The taxing Section for incometax is section 3 read with Schedule I and that for supertax is section 55. The only quantum difference for our pre consideration between the incometax and supertax is that whereas the entire income is liable to ordinary incometax, the first ₹ 50,000/- is exempted from supertax which levied only on super-income, meaning thereby the excess over the first ₹ 50,000/-.

It follows therefore that a company is liable to be super-taxed when its total income exceeds ₹ 50,000/- irrespective of that portion of that income is derived in the Mysore State; in other words even if the income earned in the state is less than ₹ 50,000/- it is pri facie to be taxed provided the total income calculated under section 10(1) exceeds ₹ 50,000/-. Neither of the sections viz 10(4) and 10(1) is excluded under Section 70 and both are operative and have to be enforced. The greater part of the argument on behalf of the company was directed to establish the proposition that since no tax is to be collect on the British Indian income unless it falls within the purview of Section 4 it could not be taken into consideration even fo determining the rate as that would tantamount to taxing it indirectly If that is all the contention it is against the clear intention of the Legislature, for the saving clause in section 4 is directed to full effect to Section 1 (1) which the Legislature has deliberately added. Admittedly no aid can be derived from the decisions and la in other countries; each has its own statutes and arrangements. It is not for the courts to find reasons for the policy of the Legislature especially when interpreting the Incometax statutes.

The Legislature must be intended to mean what it has plainly expressed, and consequently there is no rule for construction- Maxwell on interpretationof statutes. sixth edition. page six.

where the words of the section admit of no ambiguity judges are not entitled to add to or take from them - per Harrington J. in 27 Calcutta 774 (782). The scheme of the regulation whether in respect of incometax or supertax is repugnet to the theory that British Indian income could not be considered for purposes of rating. After all I cannot understand why we should fight shy of the principle that it is the capacity of the assessee based on his total income that should be the criterion for fixing the rate. The very graduation of rates for incometax, and high standards of income requisite to give rise to liability for supertax go to indicate that the financial capacity as judged from income is all important. The higher the income the greater the rate for incometax or the liability for supertax. If theliability for supertax is not determined by enforcing section 14(1) a person whose income for instance is Rs. 45,000/- in Mysore and Rs. 45,000/- in British India could successfully evade supertax both in Mysore and in British India.

Thus, so far as the enforcement of both sections 14(4) and 16(1) are concerned my learned brother and I are of the same opinion; but with regard to the application of Schedule II and Section 10(4) and the conclusion to be arrived at, after carefully considering the matter, with all difference, I feel constrain to defer from him. My endeavour is to remove the conception that supertax will become payable in Mysore only when the portion of the income exceeds Rs. 50,000/-. Under Schedule II the " excess over Rs. 50,000/- of total income" is liable to supertax. Section 16(1) and Schedule II have deal with the total income and section 10(4) separates the state income from British Indian income for purposes of actual taxation. Those several stages are very important and should be carefully and strictly followed, and any construction which facilitates the evasion of the statute

should

hould be avoided. Then the total income as determined under section 10 is a mixture of both the Mysore and British Indian incomes and while it is in that condition the whole and every part of it is made up of both a Mysore and Britha Indian incomes. If in this state of totality of the income the provisions of Schedule II are applied, th total income is split up into two portions, (a) the first ₹50,000/- of the total income which is exempted from supertax and (b) the balance of the total income, ₹ or superincome if I may style it, which is liable to supertax. It is obvious that both the figures A and B have all the characteristics of the totality, that is, every part of it comprises both the Mysore and British India incomes. The functions of section 10(4) commences at this stage and that function is to separate the Mysore portion of the total income from British Indian income, while Schedule II divides the total income in two parts <u>without</u> any reference to the locality, namely Mysore and British India. It is very important to note this essential difference between the functions of Schedule II and section 10(4), for though their application has the effect of partioning the total inc. their aim, scope and effect are quite different. Perhaps it may be stated that Schedule II and section 10(4) cut the total income in different planes, one horizontally and other vertically. In the case of incometax section 10(4) is applied once for all and hence there is no difficulty, but when it is taken up in connection with supertax some confusion is likely to arise since it will have to be applied both before and after deducting ₹ 50,000/- in accordance with Schedule II.

To take an illustration: If the Mysore income is ₹ 50,000/- and the British India income ₹ 50,000/- the total income come up to one lac. Out of this one lac the first ₹ 50,000/- is first to be deducted in ~~accordance~~ compliance with the imperative direction in Schedule II to find the excess or super-income before any further deduction or deductions can be thought of. There can be no reason

whatever

whatever to treat the first ₹ 50,000/- in Schedule II as Mysore income; for it would be equally pertinent for the Crown to contend that the whole of the said first ₹ 50,000/- is to be treated in the hands as the entire British Indian income alone. As explained above, the total income, ~~xxxxxxxxxxxxxx~~ and every part of it is made up of both kinds of income, so that in every unit of coin in one lac as well as in the excess or super-income of ₹ 50,000/-, one fifth portion is Mysore income and four-fifths British Indian income. The function of section 15(4) is to find out the value of the Mysore portion of the super-income which is liable to supertax; that portion obviously is one-fifth of ₹ 50,000/- or ₹ 10,000/-. In British India also, under similar conditions supertax would be liable on four-fifths of ₹ 50,000/- or ₹ 40,000/-. The total amt. of supertax thus levied in both the countries put together would be only on the excess contemplated in Schedule II.

The principles seem to be clear. Whatever the reasons or policy may be, the rate of income-tax or supertax is determined on capacity of the assessee as judged from his total income including British Indian income, but actual collection is made only on the Mysore portion only after deducting the British Indian portion. Now such a deduction can be made only once, and not more than once merely on the score of references made to deductions in different parts of the Regulation. The object is not to tax the British Indian portion and thereby obviate any hardship from the probable double taxation by levying the tax both in Mysore and British India but it is not meant that the same British Indian income should be deducted more than once in different forms. ₹ 50,000/- referred to in Schedule II is not an arbitrary figure independent of the total income. but it is its first portion; that being so there can be no reason to deduct the said portion once again from the excess or balance.

this appears to be the only possible and reasonable interpre-
tation that can be given if we are to give effect to the provisions
of the Regulation and not evade them. When I suggested my ideas
to my learned brother I might have safely dispensed with the word
equitable, for in my opinion there is no application of any rule
of equity in its technical sense; in fact if equity is applied
at all in this case by my interpretation, I cannot see how it is
not in the favour of the subject, for the whole of £ 50,000/- might
as well be treated as the British Indian income if the opposite
contention is to be pressed. The language of the Regulation is
plain and unambiguous for Schedule II clearly makes the excess over
£ 50,000/- chargeable with supertax. Deductions are permissible
only to the extent authorised and no more. While we cannot tax
the subject beyond the expressed provisions we cannot also "whittle
down" the tax due to the Crown by giving him deductions for unautho-
rised items; both cases are liable to the principle of strictly
construction. If we conceive, as we must by reason of the express
words in Schedule II, that £ 50,000/- is part of the total income,
and if we further conceive that the said portion of the total income
includes British Indian income, then there can be no ground whatever
to deduct the British Indian income in its entirety from the balance
left. The total income is a homogeneous compound of both the
incomes, and if Section 10(4) is to be enforced the separation of the
two incomes thereunder can be possible only by fixing their values
in the whole as well as in the parts only as explained above. The logi-
cal consequences, in my opinion, must necessarily lead to the result
arrived at by me and there seems to be no escape from it.

If as I said above the wording of the enactment is plain
and unambiguous it is not necessary to look for the object and in-
tention of the Legislature by consideration of matters outside the

Section

...ction itself - Sir John Edge C.J., in Indian Law Reports I. All ... Madras(192). When 'the words of the two subsections were unambiguous' the court felt itself bound to give effect to them 24 Madras 1075(193).

"To carry out effectually the object of a statute it must be construed as to defeat all attempts to do or to avoid in an indirect or circuitous manner that which it has prohibited or enjoin... Maxwell, page 107.

"The courts are to give the statute a reasonable construction. They will not readily presume, out of the respect and duty to the lawgiver, that any very unjust or abused consequence was within the contemplation of the law. But if it should happen to be too palpa... in its direction to admit of but one construction there is no doubt in the English language law, as to the binding efficacy of the stat... the will of the Legislature is the supreme law of the land, and de... perfect obedience".- Ibid, p. 480.

In 8 Mysore Law Reports p. 60 the same rule of construction was enun... ciated by the esteemed Judges, C.C. Plumer, C.J., and A. Ramachandra Iyer, J, who observed

" So construed, the provisions of ..... would be completely nullified and the Legislature would stand convicted of having perpetrated the manifest absurdity of having contradicted in one breath what it had asserted in the previous breath. It is cl... that we should not be justified in applying such a construction, if we could find any other fair and reasonable construction which will reconcile the provisions of.....with the provisions of....."

The alternative interpretation of giving deduction to the entir... British Indian income in addition to the first Rs 50,000/- of such i... was not mooted by the learned counsel for the Company, presumably, as I think, because it could be maintained. I am unable to agre... with the learned Government Advocate that the word "...

It seems to me that section 4(a) had necessarily been omitted in section 63 for the simple reason that neither kind of tax can be collected (as opposed to rating) on the British Indian income as such, unless it falls within the purview of section 4. My opinion the construction suggested is defective in as much as it fails to give effect to the charging provisions in section 63 and each rule II and allows deductions beyond what the regulation enjoins. No flaws have been pointed out in the decision I have arrived at, which, while it prevents an individual liable to superintendence and British India under similar conditions(as it really is at present) from evading payments in both the countries, also extends to him the requisite protection against double taxation; if this is so, perhaps there may be no need for any reciprocal arrangement on the point.

Answers to the questions of the assessing officer can be formulated only after the matter is finally settled.

Sd/ [illegible]

Judge.

K.C.D., [illegible].

Name of the Company	Total income		Mysore income	Income method
Oriental Assurance Company	1924-5	5,20,283	21,289	1330
	1925-6	17,01,532	67 367	4210
	1926-7	17,01,532	64 844	4052
Spencer & Co.	1924-5	3,66,657	17,478	1092
	1925-6	-	34 671	2166
	1926-7	-	11 344	709
The Mysore Spinning & manufacturing Co.	1924-5	3,28,316	2 84 835	1778
	1925-6	2,46,175	218 182	1363
	1926-7	1,37,299	122 684	725
The Asiatic Petroleum Company	1924-5	9,89,336	21,666	133
	1925-6	15,02,822	30,898	193
	1926-7	15,00,279	31,475	196
The Sholapur Spinning & Weaving Company	1924-5	19,20,930	96,351	6021
	1925-6	8,39,647	35 243	2201
	1926-7			
The Burma Oil Co.	1924-5	4,26,07896	2,78584	17411
	1925-6	3,94,86783	3,54547	22159
	1926-7	3,79,96,33	3,23,860	20241
The Central India Spinning & Weaving Co.	1924-5	16,46,441	14,309	894
	1925-6	15,35,109	7486	467
	1926-7	9,53,787	3796	237
The Swadeshi Mills	1924-5	9,77,333	23562	1472
	1925-6	7,05,126	1678	-
	1926-7	4,48,864	5240	-
The Singer Sewing machine	1924-5		5931	370
	1925-6		11054	690
	1926-7		13603	850
The Bangalore Bank Ltd	1924-5	67262	18360	1147
	1925-6	75,684	12797	798
	1926-7	58,025	5772	

13245

come Tax payable according to the		Super. tax payable by the companies	
Govt. is to adopt	definition of total income in Section 16(1)	after allowing deduction u/s 50, on the income	according to the method given in the answer of the Chief Cashier
9-0	1330-9-0	—	1202-12-0
9-0	4210-7-0	10851	4086-12-0
2-0	4052-12-0	9281	3933-11-0
6-0	1092-6-0	—	943-7-0
5-0	2166-15-0	—	—
0-0	709-0-0	—	—
7-0	17783-7-0	14658	14658-7-0
6-0	13636-6-0	10511	10866-12-0
0-0	7252-0-0	4542	4875-5-0
2-0	1354-2-0		1285-1-0
2-0	1931-2-0		1866-14-0
3-0	1967-3-0		1901-10-0
15-0	6021-15-0	2897	5865-4-0
11-0	2202-11-0	—	2071-7-0
8-0	17411-8-0	14286	17391-1-0
3-0	22,159-3-0	19034	22131-2-0
4-0	20241-4-0	17116	20214-9-0
-0	894-5-0		867-3-0
-0	467-14-0		452-10-0
-0	237-4-0		224-13-0
0-0	1472-10-0		1397-5-0
	104-14-0		97-7-0
	33-12-0		30-0-0
-0	370-11-0		—
4-0	690-14-0		
3-0	850-3-0		
-0	1147-8-0		274-7-0
8-0	798-13-0		389-7-0
	35-12-0		110-8-0
0-0	13262-6-0	85,057	12-5388-11-0

	The Indo Burma Petroleum Co.	1924-5	-	572	-
		1925-6	-	3193	199-9-
		1926-7	-	56	-
	Binny & Co (Madras).	1924-5	11,86,735	2,30,756	7695-5
		1925-6	-	1,95,916	5938-
		1926-7	-	1,69,347	5314-
	M & S. M. Ry. Co.	1924-5		1,75,315	1095-7-
		1925-6		2,141 331	13395-
		1926-7			
	Coimbatore Spinning Co. Ltd	1924-5		246	15-6-
		1925-6			
		1926-7			
	Rally Bros. Agency	1924-5	50,40,120	10489	653-9
		1925-6	46,53,614	10658	665-1
		1926-7	4407289	10522	657-0
	The Standard Life Assurance Co.	1924-5	33,07,270	11,284	705-4
		1925-6	-	11,040	690-0
		1926-7	-	12,435	777-3
	The Standard oil Co.	1924-5	3,14,562	31524	197-2
		1925-6	-	57003	3187-11
		1926-7	-	67109	419.4-5
	The Empire of India Life Assurance Co.	1924-5	1,94,526	2926	182-14
		1925-6	1,94,526	3262	203-14
		1926-7	1,94,526	3383	211-9
	The Sun Life Assurance Co	1924-5	-	539	
		1925-6	~~1,94,526~~	696	-
		1925-6	-	1946	-
	The Bharat Insurance Co.	1924-5	26,241	708	-
		1925-6	-	800	-
		1926-7	1,32,387	1699	-

558,4

35-12-0			
199-9-0			
3-8-0			
7696-5-0	11297	13814-10-0	
5938-4-0	9120	11620	?
5314-9-0	7460	10000	?
10957-3-0	7832	10801	?
13395-11-0	10271	13240	?
15-6-0			
653-9-0		649-1-0	
665-13-0		658-11-0	
657-10-0		650-3-0	
705-4-0		694-10-0	
690-0-0		-	
777-3-0		-	
197-2-0		165-13-0	
3187-11-0	63	-	?
4194-5-0	1070	-	
182-14-0		135-14-0	
203-14-0		157-8-0	
211-9-0		157-3-0	
34-15-0			
43-8-0			
121-10-0			
44-4-0			
50-0-0			
106-3-0		66-2-0	
56284-9-0	47113	62884-11-0	

	Hajee Habib, Haji	1925-6		28030	876-
	Peer Mahomed	1926-7		16442	385-
	V.R. & Bros.	1926-7	9301	7176	162-
	V.K. Abdul Rahiman &	1924-5	31,997	20883	488
		1925-6		10700	250
		1926-7		6504	101
	N. Sivan & Co.	1924-5	42,565	36,696	1146
		1925-6	52,089	46,166	2166
		1926-7	66,374	58129	363
	Mangoomal Jeesa Singh Sait	1924-5	~~14,771~~ 14771	~~34640~~ 3633	346
		1925-6	~~3633~~	~~56120~~ 7079	56
		1926-7	~~7079~~	~~40100~~	11
	Mangoomal Itani Gerind Singh Sait	1925-6		16353	38
		1926-7		17040	39
	Ebrahim Sait & Co	1926-7	9,000	6825	10
	K.S. Iyer	1924-5		4962	7
		1925-6		1014	
		1926-7		397	
	Bangalore Cycle & Motor Co.	1924-5	above 25,000	4,000	62
		1925-6	" 30,000	10,000	2
		1926-7	" 30,000	263	
	Ubhayakar & Bros.	1924-5		2604	40
		1925-6		(7 items) 2638	16
		1926-7			
	The Manager, Income Tax Office	1925-6		1794	-
		1926-7		1873	-
	Hajee Zainulabdin	1924-5	above	~~45,883~~	76-5
		1925-6	~~Rs 90,000~~	~~57,884~~	91-8
		1926-7	—		
	N. Pathak & Sons	1925-6	Above	5,000	78-
		1926-7	Rs 9,000	6,000	93-
					11399

1751-14-0			
1027-10-0			
168-3-0			
651-10-0			
334-6-0			
152-7-0			
1720-2-0			
2886-6-0		115-12-0	
3633-1-0	508	896-4-0	
923-3-0			
227-1-0			
442-7-0			
1022-1-0			
1065-0-0			
159-15-0			
310-2-0			
63-6-0			
24-13-0			
125-0-0			
312-8-0			
8-4-0			
122-1-0			
164-14-0			
112-2-0			
113-5-0			
114-7-0			
137-0-0			
117-3-0			
140-10-0			
18120		1012-0-0	

	Md. Sahib Saheb & Sons	1925-6	25.000	24,853 ~~24,456~~	38
	P.R. Ramadyer & Co	1925-6	Above	2346	
		1926-7	25,000	1758	
	V. Rajagopalachari	1925-6	15873	2163	
	Chagan Lal Lakshmi chand	1926-7	above ~~25,000~~	6621	10
	Mangumal Chella Singh	1924-5	32157	32151	17
		1925-6	above 50,000	969	
		1926-7	" do	34594	10
	Mangumal Lunida Sait	1924-5	Above	34891	10
		1925-6	50,000.	9370	2
		1926-7		24,105	56
	Chari & Ram	1925-6	48,835	3864	6
		1926-7	50,000	6107	9
Bangalore	Md. Kasim Khan	1924-5	11,107	8107	12
		1925-6	13,352	8352	13
Kolar -		1925-6	9538	6353	9
Tumkur -	-			-	-
Mysore					
Hassan	Arunagiri Chetty	1924-5	12,147	4912	76
		1925-6	27,428	6055	93
		~~1926-7~~	~~16,171~~	~~10756~~	21
	Sivilingappa	1925-6	16,171	10756	2
		1926-7	14,432	9017	13
	Ranjiah	1925-6	7136	2787	1
		1926-7	9414	2914	45-9-0
Shimoga					
Kadur					
Chitaldrug					
					600

	57-8-0		
	73-5-0		
	54·15-0		
	50-11-0		
·7-0	206·15-0		
5·7-0	1735·7-0		
	45·7-0		
1-1-0	2162·2-0		
6-0	2180·12-0		
10-0	585-10-0		
15-0	1506·9-0		
6-0	181-3-0		
7-0	381-11-0		
10-0	190-0-0		
9-0	195·13-0		
5-0	140·15-0		
2-0	115·2-0		
12-0	189·4-0		
2-0	262-2-0		
2·2-0	252-2-0		
10-0	158-10-0		
9-0	43-9-0		
5-0	68·5-0		
	9755		

Chitalang	Mr. Boyadeji Eswarth	1924-5	8377	130-140
		1925-6	8778	137-3
	Mr. Gamadia	1925-6	4430	68-16
		1926-7	18033	422-40
	Bai Dorai Bai N. Belgaum mills	1925-6	57,000	78-2
		1926-7	11,243	263-3
	Mr B. O. Wala Walkar	1925-6	8008	125-
		1926-7	4586	71-7
	~~Navaji~~		~~7792~~	
				1194

196-5-0.

205-12-0

137-15-0

563-8-0

117-3-0

263-3-0.

250-4-0

142-11-0.

1873

G R S III—81

Routine Notes.

[To be used only for notes requisitions, etc., not intended for permanent record.]

D. No. 19/95

FINANCIAL SECRETARIAT. No. 2077 21 SEP. 1926

Bangalore, the 18 September, 1926

Pol. 340

From

Major K. A. G. Evans Gordon,
Secretary to the Resident in Mysore,
BANGALORE.

GE REV. SECTT. BR. To 18 SEP. 1926 G. Bangalore

The Secretary to the Government of Mysore,
Revenue Department.

Subject

Government Trading Taxation Act (8 of 1926) liability to Indian Income Tax of Indian States.

This Office No. 6174 dated the 7th July 1926.

Subsequent Reminder No. 7418, dated the 26th August 1926.

Sir,

I am directed to invite attention to the communication noted on the margin and to enquire when reply may be expected

I have the honour to be,
Sir,
Your most obedient servant.

Major,
SECRETARY TO THE RESIDENT.

S. 8.—R. P. B.—4-1920.—3,000

The file relating to the Subject was subd. to the d.d. Secy on 14th Sept 1926. may this also be sent to the d.d Secrt?

KW 21/9 21926

did we not send an interim reply (card) by me? B 22/9

No ad-interim reply was sent.

(To be placed with the connected file after receipt) 28/9/26

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

OFFICE OF THE SECOND MEMBER OF COUNCIL. 24 SEP. 1926 No. 234

APP., F. VI. Gl.]

SUBJECT.....

.....

.....

Section 9T

File No.

Serial No.

No. Pol. 311

Diary No. of letter replied to 1298

To

The Secretary to the
Hon'ble the Resident

General and Revenue Secretariat
(H)
the *192*

Sir,

Date of issue 27/9/26

Signed by Asst. C. R. Saheb

With reference to yr letter no. 6174 & 17th July 192 in regard to the liability of the States to Indian Income Tax and the Govt. Trading Taxation Act of 1926, & subsequent reminders thereon, I am directed to state that the question is engaging the attention of Govt and a reply will be sent shortly

I have &c

Sec'y to Govt
Rev. Deptt

List of enclosures.....

Copied by.....

Examined by.....

over

Copy No. 12 of 19 — 19

Section.

File No.

Serial No.

Proceedings of the Meeting held in the Dewan's Chambers on Wednesday the 8th September 1926 in regard to the Departments under the control of the Excise Commissioner.

PRESENT.

DEWAN.

Second Member of Council.

The Excise Commissioner.

The Revenue Secretary.

The Assistant Secretary.

x x x

4. Application of the provisions of the Govern Trading Taxation Act to C. & M. Station.

The Second Member explained the position and said that there was no anology between Indian State trading in British India and Mysore State doing business in the C. & M. Station. He had expressed his views on the subject and the matter might be considered in due course.

Assistant Secretary's remarks.

No action necessary.

[. F. VI. 61.]

[P ECT.....

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lection

File No.

Serial No.

ry No. of letter replied to.....

D. G No. H 3874 Confidential

To .....

General and Revenue Secretariat

( )

the *192*

Dear Sir,

I am desired to request you to be so good as to forward a statement showing the extra income ~~for the past 3 years~~ of the Mysore Govt. is getting by the application of Section 16(1) of the I.T. Act, 1923 according to which it is the total income of an assessee that determines the liability to, and rate of, income-tax.

Date of issue.....1.9.11.26.....

Signed by.....J.M.B.M.....

List of enclosures.....

Copied by.....

Examined by.....

Yours faithfully,
Secretary to Government
B

B. Ramaswamaya Esqr BBA
Commr of Income Tax

over

WD 01265—GPB—31,000—24-12-25

2180

I. T. 69]

IN REPLY REFER TO
No. C. 312
ENCLO. 26-7

19 — 19

OFFICE OF THE COMMISSIONER OF INCOME-TAX
IN MYSORE Section.

Bangalore, 24th November, 192 6.

Confidential.

Dear Sir,

With reference to your confidential D.O. letter No. Fl.3870 dated 19th November 1926 calling for a statement showing the extra income of the Mysore Government for the past three years by the application of section 16(1) of the Income Tax Regulation, I beg to state that it is presumed tha the statement should be confined to the extra income derived by the inclusion of the British Indian income of businesses carried on both in Mysore and in British India, in the total income for the purposes of ascertaining the liability to tax and the rate of tax.

Assuming this presumption to be correct, I am calling for the information from the Deputy Commissioners of Income Tax, as soon as possible.

Yours sincerely,

B. Nagappa, Esq., Bar-at-Law,
Secretary to the Govt. of Mysore,
Local and Legislative Departments,
Bangalore.

[P. F. VI. Gl.]

SUBJECT.....

.....

.....

Section

File No.

Serial No. D. No. H 4131

Diary No. of letter replied to.....

To

.....

General and Revenue Secretariat

( )

the 192.

Dear Sir,

In reply to your D.O letter no. C312 g the 24th instt in regard to the particulars required about the income g the Govt. by the application g Section 16(1) g the I.T Act g 1923, I am desired to state that your ~~presumption~~ view g what is required is correct and to request you to be so good as to furnish the Revenue realised as per application g Section 16(1) and without it in respect g the case assessable under Mark s.e.a.

Yours Sincerely

S.H.

B. Ramaswamiah Esq B.A.

over

Commr g I.T.

Date of issue.....2.9.11.26.....

Signed by.....M. B. N.....

List of enclosures.....

Copied by.....

Examined by.....

WD 01265—GPB—31,000—24-12-25

Confidential

I. T. 69]

IN REPLY REFER TO
No. C. 312/26-27
ENCLO. 1

OFFICE OF THE COMMISSIONER OF INCOME-TAX
IN MYSORE,

Bangalore, 16th December 1926.

18/12/26

9.T.11-26.3

DIARY NO. 2525

9 — 12

FINANCIAL SECRETARIAT
20. DEC. 1926

Dear Sir,

As called for in your D.O. No. Fl. 3870 dated 19th November 1926, I send herewith a statement showing the extra inco under the head " Income Tax " derived during the past 3 years by the application of 16 (1) of the Mysore Income Tax Regulation, to businesses carried on both in Mysore and British India.

It will be seen from the statement that the extra inc derived by the application of section 16 (1) is as noted below :-

Year.	Amount.
1923-24	2,335-13-0
1924-25	3,967- 8-0
1925-26	7,163-15-0
Total	13,467- 4-0

The information received from the Deputy Commissioner is not complete. The Deputy Commissioners of Kolar, Mysore and Shimoga have furnished figures of their own offices and have call for the same from their subordinate offices. As cases of the kir may not be found in the subordinate Income Tax Offices the state has been provisionally prepared and submitted.

The Deputy Commissioners have also been written to, forward the information received from their subordinate offices without delay. If from the information that may be received fr the Deputy Commissioners any increase in the amount is disclos the same will be submitted to Government.

Yours sincerely,

B. Ramamurthi

B. Nagappa, Esq., Bar-at-law.,
Secretary to the Government of Mysore,
Local and Legislative Departments, Bangalore

Statement showing the extra income under the head "Income Tax" derived during the past 3 years by the application of 16.(i) of the Mysore Income Tax Regulation to businesses carried on both in Mysore and British India.

Vg.	Names of offices: -	1923-24			1924-25			1925-26			Remarks.
	Offices of the Deputy Commissioner of Income Tax for Bangalore & Mysore Cities & Taluqs	1,606	-	-	1,938	-	-	3,288	-	-	
	Bangalore District	-	-	-	63	6	-	654	-	-	
	Kolar "							491	10	-	
	Tumkur "										
	Hassan "				38	6	-	95	8	-	
	Mysore "										
	Kadur "	729	13	-	1,812	8	-	3,223	14	-	
	Shimoga "										
	Chitaldrug "				115	4	-	441	11	-	
	Total	2,335	13	-	3,967	8	-	7,163	13	0	

For Commissioner of Income Tax

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

Section

File No.

Serial No.

No. H 4190/

D.O. Immediate.

To

.....

General and Revenue Secretariat

( )

the 192

Dear Sir,

I am desired to invite attention to the correspondence ending with ~~Your~~ my d.o. letter No: H: 4131 dt the 29th. Nov: 26 in regard to the income of the Govt. by the application of section 66 (1) of the I.T. Regn. of 19 & to request you to kindly ~~be so good as to furnish~~ the Statement called for ~~without~~ at very early.

Yours truly

HVK

7/12/2

Date of issue.....7.12.26.....

Signed by.....Mr. B.S.R.....

List of enclosures.....

opied by.....

xamined by.....

7.12.

To. The B. Rama Krishna

Rly, Bez

over Comm. of Sts.

I. T. 69]

IN REPLY REFER TO
No. C..312/26-27
ENCLO.....

OFFICE OF THE COMMISSIONER OF INCOME-TAX
IN MYSORE,

Bangalore, 25th January 192 7.

CONFIDENTIAL.

9.T. 11-26

-3444

19 — 19

Sation.

Dear Sir,

In continuation of my D.O. No. 312/26-27 dated 16th Decembe 1926, I write to inform you that from the information received from th Deputy Commissioners of Kolar, Shimoga and Mysore that there is an increase of revenue on account of the application of Section 16 (i) as noted in the margin only in the Mysore District. The increase of revenue is, therefore, as noted below :-

Mysore District.

Year.	Amount.
1923-24	
1924-25	31-10-0
1925-26	31- 6-0,
	Total 68- 0-0

Year.	Amount.
1923-24	2,335-13-0
1924-25	3,999- 2-0
1925-26	7,200- 0-0
	Total 13,535- 4-0

Yours sincer

J Ramaswamy

20
.8/27.

B. Nagappa, Esq., Bar-at-law.,
Secretary to the Government of Mysore,
Local and Legislative Departments,
Bangalore.

APP. F. VI. Gl.]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat
( )
the 192

Date of issue 15.2.27

Signed by JMBR

List of enclosures.....

Copied by.....

Examined by.....

Section J.T.
File No. 11-26
Serial No. 5
No. H 6587/

To
The Commissioner of
Income Tax

Sir,

With reference to the correspondence ending with your communication no. C/3289 25-1-2 in regard to the increased income tax due to the inclusion accordi to Section 16(1) in 'total income' of profits or gains in British India on any business carried on both in British India & in Mysore, I a directed to request you to be so good as to report what the additional Super-tax attributa to the definition of 'total incom

over

WD 01265—GPB—31,000— 24-12-25

according to our law would be.
The details of calculation in each
case as to show the additional tax
has been arrived at may also
be given both in respect of
increased income-tax & increased
Super-tax.

2. I am also to request enquire
the exact manner in which the
decision of the Chief Court in Civil
Referred case No. 9 of 1924-25
(Re Sarabai mills, Central Spinning
Weaving & Mfg Co) is being applied
in regard to assessment of incomes to
Super-tax. The exact method of calculation
of Mysore Super-tax adopted, following
the said decision may be intimated
with reference to 3 or 4 typical cases
of income for the year 1925-26 which
come under assessment under the current
year.

I have etc
By order
Secy to Govt.
Fl: Dept

I. T. 66]

In reply refer to
No. C.3.12/26-27
Enc. Two.

OFFICE OF THE COMMISSIONER OF INCOME-TAX IN MYSORE,

Bangalore, 2nd April 1927.
6th

Confidential.

DIARY NO. 4225

19 — 19
Section.
L. No.

FINANCIAL SECRETARIAT
7 APR.
No. 55 C.

B. Ramaswamaiya, Esq., B.A., B.L.,
COMMISSIONER OF INCOME-TAX IN MYSORE.

To

B. Sreenivasa Iyengar, Esq., B.A., B.L.,
Financial Secretary to the Government of Mysore,
Bangalore

Sir,

With reference to your letter No. Fl.6587/I.T.11-26-5 dated the 15th February 1927, I have the honour to forward herewith a statement (No.I) showing the details of calculation of Income and Super Taxes in the case of business carried on both in British India and in Mysore for the years 1924-25, 1925-26 and 1926-27. The effect of cases only where there is difference of tax according to two different kinds of calculatic have been shown at the end of this statement.

2. Statement No. II explains, in a few cases, the method of calculation of Mysore Super tax according to the recent decision of the Chief Court.

I have the honour to be,
Sir,
Your most obedient servant,

B. Ramaswamaiya

Commissioner of Income Tax.

6.4.27.

Office of the Deputy Commissioner of ... Stati...

File No.	Name of the assessee.	Total income in and out of Mysore	Mysore ...
		Rs.	Rs
2-C.B.2	The Oriental Government Security Life Assurance Co., Ltd.,	1924-25 = 5, 20, 283	21, 2...
		1925-26 = 17, 01, 532	67, 3...
		1926-27 = 17, 01, 532	64, 8
3-C.B.3	Spencer & Co., Ltd.,	1924-25 = 3, 66, 657	17, 4
		925-26 = Not known (above Rs 50,000/-)	34, 6
		926-27 = — Do —	11, 3...
5-C.B.5	The Mysore Spinning & Manufacturing Co., Ltd,	1924-25 = 3, 28, 316	2, 84,
		1925-26 = 2, 46, 175	9/10 2, 18,
		1926-27 = 1, 37, 299	1, 22,
6-C.B.6	The Asiatic Petroleum Co., (India) Ltd.,	1924-25 = 9, 89, 336	21, 6
		1925-26 = 15, 02, 822	30,
		1926-27 = 15, 00, 279	31,
7-C.B.7	The Solapur Spinning & Weaving Co., Ltd.,	1924-25 = 19, 20, 930	96, 3
		925-26 = 8, 39, 647	35, 2
		1926-27 =	
8-C.B.8	The Burmah Oil Co., Ltd.,	1924-25 = 4, 26, 07, 896	2, 78,
		1925-26 = 3, 94, 86, 783	3, 54,
		1926-27 = 3, 79, 96, 335	3, 23,
9-C.B.9	The Central India Spinning, Weaving & Manufacturing Co., Ltd,	1924-25 = 16, 46, 641	14, 3
		1925-26 = 15, 35, 109	76
		1926-27 = 9, 53, 787	37
11-C.B.11	The Swadeshi Mills Co., Ltd.,	1924-25 = 9, 77, 333	23, 5
		925-26 = 7, 05, 126	16
		1926-27 = 4, 48, 864	54

come tax, Bangalore and Mysore Cities and taluks

ment No. I ...

...come.	Income tax payable in Mysore.		Super tax in Mysore taking both incomes into consideration		Remarks.
	(a)	(b)	(c)	(d)	
9	1330-9-0	1330-9-0	1330-9-0	1202-12-0	Calculation re Income-tax is made
7	4210-7-0	4210-7-0	4210-7-0	4086-12-0	thus:—(a) at the rate applicable
4	4052-12-0	4052-12-0	4052-12-0	3933-11-0	to the All-India Income.
8	1092-6-0	1092-6-0	1092-6-0	943-7-0	(b) at the rate applicable to the
1	2166-15-0	2166-15-0	2166-15-0	———	Mysore Income.
4	709-0-0	709-0-0	709-0-0	———	
35	17,783-7-0	17,783-7-0	17,687-12-0	14,658-7-0	Calculation re Super-tax is
72	13,636-6-0	13,636-6-0	12,260-15-0	10,866-12-0	made thus:—
84	7,252-0-0	7,252-0-0	5456-3-0	4875-5-0	(c) by not giving any deduction
6	1354-2-0	1354-2-0	1354-2-0	1285-11-0	for the first fifty thousand
8	1931-2-0	1931-2-0	1931-2-0	1866-14-0	where the British Income India
15	1967-3-0	1967-3-0	1967-3-0	1901-10-0	income is less than Rs 50,000/-
1	6021-15-0	6021-15-0	6021-15-0	5865-4-0	(d) by allowing pro-rata deduc-
3	2202-11-0	2202-11-0	2202-11-0	2071-9-0	tion towards the first 50,000/- by
———	Await	———	———	———	taking the two incomes into
84	17,611-8-0	17,611-8-0	17,611-8-0	17391-1-0	consideration.
47	22,159-3-0	22,159-3-0	22159-3-0	22731-2-0	
60	20,241-4-0	20,241-4-0	20216-9-0	20216-9-0	
	896-5-0	896-5-0	896-5-0	867-3-0	
	467-14-0	467-14-0	467-14-0	452-10-0	
	237-4-0	237-4-0	237-4-0	224-13-0	
	1472-10-0	1472-10-0	1472-10-0	1397-5-0	
	106-14-0	———	106-14-0	97-7-0	
	33-12-0	———	33-12-0	30-0-0	

File No.	Name of the assessee.	Total income in part of Mysore.	Mysore In
12 C.B.12.	The Singer Sewing Machine Co.,	1924-25 = Not known (above 50,000/-)	5 9
		1925-26 = — Do —	11 0
		1926-27 = — Do —	13 6
14 C.B.14.	The Bangalore Bank Ltd.,	1924-25 = 6.7 2.62	~~1 7 1~~ 0
		1925-26 = 75,684	18 36
		1926-27 = 58,025	12 7
15 C.B.15.	The Indo-Burmah Petroleum Co., Ltd.,	1924-25 = Not known (above 50,000/-)	5
		1925-26 = — do —	3 1 9
		1926-27 = — Do —	5
16-CB.16	Binny & Co., (Madras) Ltd.,	1924-25 = 11, 86, 735	2, 30, 7
		1925-26 = Not known (above 50,000/-)	1, 95,
		1926-27 = — do —	1, 69,
19-CB.19.	The Madras & Southern Maharatta Railway Co., Ltd.,	1924-25 = Not known (above 50,000/-)	1, 75,
		1925-26 = — Do —	2, 14,
		1926-27 =	
20-CB20	The Coimbatore Spg & Wvg Co., Ltd.,	1924-25 = Not known (above 50,000/-)	2 46
		1925-26 }	
		1926-27 }	
25-CB25	Ralli Brothers' Agency	1924-25 = 50,40,120	10689
		1925-26 = 46,55,614	10 6 5
		1926-27 = 46,07,289	10 5
26-CB.26	The Standard Life Assurance Co., Ltd.,	1924-25 = 33,07,270	11 2
		1925-26 = Not known (above 50,000/-)	11 0
		1926-27 = — Do —	12 4
17-CB.2,	The Standard oil Co., of New York	1924-25 = 3, 14, 562	3 1 5
		1925-26 = Not known (above 50,000/-)	5 1 0
			6 7

-came.	Income-tax payable in Mysore. (a)	(b)	Super tax in Mysore taking both incomes into consideration (c)	(d)	Remarks.
31	370-11-0	370-11-0	370-11-0		
4	690-14-0	690-14-0	690-14-0		
3	850-3-0	850-3-0	850-3-0		
1709	1069-5-0	1069-5-0	1069-5-0	274-7-0	
	1147-8-0	1147-8-0	1147-0-0	389-7-0	
1	798-13-0	798-13-0	~~798~~ 801-9-0	110-8-0	
2	35-12-0		35-12-0		
	199-9-0	199-9-0	199-9-0		
	3-8-0		3-8-0		
56	7695-5-0	7695-5-0	16,422-4-0	13814-10-0	
6	5938-4-0	5938-4-0	12,246-12-0		
7	5314-9-0	5314-9-0	10,586-3-0		
5	10957-3-0	1095 7-3-0	10957-3-0		
1	13395-11-0	13395-11-0	13395-11-0		
Not yet assessed					
	15-6-0		15-6-0		
Await					
	655-9-0	655-9-0	655-9-0	669-1-0	
	665-13-0	665-13-0	665-13-0	~~12~~ 11-0	
	657-10-0	657-10-0	657-10-0	650-3-0	
	705-4-0	705-4-0	705-4-0	694-10-0	
	690-0-0	690-0-0	690-0-0		
	777-3-0	777-3-0	777-3-0		
	197-2-0	197-2-0	197-2-0	165-13-0	
	3187-11-0	3187-11-0	3187-11-0		

Serial No.	File No.	Name of the assessee.	Total income in and out of Mysore.	
18	28-CB.28.	The Empire of India Life Assurance Co, Ltd,	1924-25 =	1,94,526
			1925-26 =	1,94,526
			1926-27 =	1,94,526
19	29-CB.29	The Sun Life Assurance Co., of Canada	1924-25 =	Not known (above 50,000/-)
			1925-26 =	——— Do ———
			1926-27 =	——— Do ———
20	270-CB 36	The Bharat Insurance Co., Ltd.,	1924-25 =	26,241
			1925-26 =	Not known.
			1926-27 =	1,32,387
21	164-PM-7	Haji Habib Haji Peer Mohamed	1925-26 =	above 50,000/-
			1926-27 =	——— Do ———
22	273-P.M.68	V. K. & Brothers.	1926-27 =	9301
23.	P.B 87.	V. K. Abdul Rahiman & Co.,	1924-25 =	31,997.
			1925-26 =	Above 25,000/-
			1926-27 =	above 20,000/-
24	P.B. 191	N. Iyer & Co.,	1924-25 =	42,565
			1925-26 =	52,089
			1926-27 =	66,374
25	P.B. 119.	Mangoomal Jessa Singh, Sait	1924-25 =	above 50,000/-
			1925-26 =	——— Do ———
			1926-27 =	——— Do ———
	110	Mangoomal Jessa Singh Sait	1925-26 =	above 50,000/-
			1926-27 =	——— Do ———
	P.B 161	Ebrahim Sait & Co.,	1926-27 =	above 9000/-
26	P.B. 215	——— K. L. Iyer ———	1924-25 =	above 50,000/-

Income.	Income tax payable in Mysore. (a)	(b)	Super tax in Mysore taking both incomes into Consideration (c)	(d)	Remarks.
926	182-14-0	182-14-0	182-14-0	135-14-0	
262	203-14-0	203-14-0	203-14-0	151-8-0	
385	211-9-0	211-9-0	211-9-0	157-3-0	
559	36-15-0		36-15-0		
696	43-8-0		43-8-0		
1946	121-10-0		121-10-0		
708	44-4-0				
800	50-0-0				
1699	106-3-0		106-3-0	66-2-0	
18030	1751-14-0	875-15-0	1751-14-0		
64642	1027-10-0	385-6-0	1027-10-0		
7776	168-3-0	112-2-0			
10,853	651-10-0	488-12-0			
10700	334-6-0	250-13-0			
6504	152-7-0	101-10-0			
36,696	1720-2-0	1146-12-0			
46,166	2885-6-0	2164-1-0	130-9-0	115-12-0	
58129	3633-1-0	3633-1-0	1023-6-0	896-4-0	
14771	923-3-0	346-4-0	923-3-0		
3633	227-1-0	56-12-0	227-1-0		
7079	442-7-0	110-10-0	442-7-0		
16353	1022-1-0	383-4-0	1022-1-0		
17040	1065-0-0	399-6-0	1065-0-0		
6825	159-15-0	106-10-0			
4962	310-2-0	77-9-0	310-2-0		
1014	63-6-0		63-6-0		
397	24-13-0		24-13-0		

Serial No.	File No.	Name of the assessee.	Total income in and out of Mysore.	Mysore I
29	P.B. 219	Bangalore Cycle & Motor Co.,	1924-25 = above 25000/-	
			1925-26 = above 30,000/-	
			1926-27 = above 29,997/-	
30	P.B. 221	Ubhayakar & Bros	1924-25 = above 40,000/-	
			1925-26 = Do	
			1926-27 =	
31	P.B. 224	The Manager Hindu Office	1925-26 = above 90,000/-	
			1926-27 = 63, 364	
32	P.B. 229	Haji Zainulabdeen	1924-25 = above 9000/-	
			1925-26 = Do	
			1926-27 =	
33	P.B. 235	N. Pathack Sons & Co.,	1925-26 = above 9000/-	
			1926-27 = Do	
34	P.B. 236	Mohamad Saliah Saheb & Sons	1925-26 = Do	
			1926-27 =	
35	P.B. 240	P. R. Rama Iyer & Co.,	1925-26 = above 25,000	
			1926-27 = Do	
36	P.B. 243	V. Rajagopalachari	1925-26 = 15 873	
			1926-27 =	
37	P.B. 257	Chegarlal Lakshmi chand	1926-27 = above 25,000/-	
38	P.B. 92.	Mangoomal Chela Singh Sait	1924-25 = 32 151	
			1925-26 = above 50,000/-	
			1926-27 = above 50,000/-	
	P.B. 101	Mangoomal Lunidas Sait	1924-25 =	
			1925-26 = above 50,000/-	
			1926-27 =	
228		Chari and Ram	1925-26 = 48,835	
			1926-27 = 50, 000	

ame.	Income-tax payable in Mysore. (a)	(b)	Super-tax in Mysore taking both incomes into Consideration (c)	(d)
000	125-0-0	62-8-0		
0,000	312-8-0	234-6-0		
263	8-4-0			
604	122-1-0	40-11-0		
638	164-14-0	164-14-0	(Registered firm)	
— Not assessed				
794	112-2-0		112-2-0	
813	113-5-0		113-5-0	
883	114-7-0	76-5-0		
844	137-0-0	91-5-0		
— Not assessed				
000/-	117-3-0	78-2-0		
000/-	140-10-0	93-12-0		
453	57-8-0	38-5-0		
— Not assessed				
346	73-5-0			
758	54-15-0			
163	50-11-0			
— Not assessed yet				
621	206-15-0	103-7-0		
151	1735-7-0	1735-7-0		
169	45-7-0			
194	2162-2-0	1081-1-0	2162-2-0	
391	2,180-11-0	1,090-6-0	2180-11-0	
370	585-10-0	219-10-0	585-10-0	
05	1,506-9-0	564-15-0	1506-9-0	
364	181-3-0	60-6-0		
07*	381-11-0	95-7-0	381-11-0	

	e No.	Name of the assessee.	Total income in and out of Mysore.		Mysore I
41	Chitaldrug District.	Mr. Byadagi Eswarappa, Gangappa.	1924-25=	not given	8,377
			1925-26=	Do.	8,778
42		Mr. Gamadiah, Davangere.	1925-26=	—	4,430.
			1926-27=	—	18,033
43		Bai Dorai Bai N. Belgaumwala	1925-26=	—	5,000
			16-27=	—	11,243
44		Mr. B. S. Wala walkar.	1925-26=	—	8,008
			1926-27=	—	4,586
45		Nowraji Hormusiji Ginning factory	1925-26=		7,782
			1926-27=		Informa by the Inco
		Hassan District.			
46		S. A. V. Arunagiri Chetty	1924-25=	12,147	491
			1925-26=	27,428	6,05
47		B. Sivalingappa	1925-26=	16,171	10,7
			1926-27=	14,432	9,
48		Manjaga	1925-26=	7,136	2,
			1926-27=	9,414	2,

	Income-tax payable in Mysore.		super-tax in Mysore taking both incomes into consideration.		Remarks.
	(a)	(b)	(c)	(d)	
	196-5-0	130-14-0			
	205-12-0	137-3-0			
	137-15-0	68-15-0			
	563-8-0	422-10-0			
	117-3-0	78-2-0			
	263-3-0	263-3-0.			
	250-4-0	125-2-0			
	162-11-0	71-11-0			
	182-6-0	121-10-0			
	No				
	115-2-0	76-12-0			
	189-4-0	93-12-0			
	252-2-0	252-2-0			
	158-10-0				
	~~211-5-0~~	158-10-0			
	43-9-0	43-9-0			
	68-5-0	45-9-0			
	148-15-0	99-5-0			
	190-0-0	126-11-0			
	195-13-0	130-9-0			

Reports that there are no Income-tax cases. the increased ~~Revenue~~ revenue under Income-tax is

24-25 — 1812-8-0
25-26 — 3223-14-0

24-25 — 31-10-0
25-26 — 36-6-0

Statement showing the effect of calculating Income an

Year	Income tax payable in Mysore taking into account the All India Income.	Income tax payable in Mysore Mysore income only into acc
924-25	6,779	3,663-8-0
925-26	9,767-7-0	5,472-7-0
926-27	12,287-8-0	7,327-5-0

Stale

Serial No	File No.	Name of the assessee.	All India Income.
1	CB. 2	The Oriental Government Security Life Insurance Co., Ltd.	17,01,532
2	CB. 3	Messrs. Spencer & Co., Ltd.,	Not known
3	CB. 5	The Mysore Spinning & Manufacturing Co., Ltd.,	1,37,299
4.	CB. 6	The Asiatic Petroleum Co., Ltd.,	15,00,279.
5	CB. 8	The Burmah Oil Co., Ltd.,	379,96,335

Statement

Difference.	(Income Super tax payable in Mysore without giving any deduction for the Rs 50,000 when the British income is more than Rs 50,000/-	Super tax payable in Mysore as per decision of the Chief Court	Difference
3,116-8-0 + 1844-10-0 (Kadur & Mysore Districts)	79,231-11-0	50,675-10-0	28,556-1-0.
3,275 + 3,264	81,866-0-0	48,708-11-0	33,157-5-0.
4,960-3-0.	58,345-7-0	31,623-3-0	26,722-4-0

Statement No II

Mysore Income	Assessable Income to S.T. in Mysore.	Super-tax payable in Mysore.	Remarks.
64,844	14,844	927-12-0.	S.T. is levied on the excess over 50,000 of the Mysore Income only.
11,344	-		
1,22,684	72,684	4,562-10-0.	
31,475	-	-	
3,23,860.	2,73,860	17,116-4-0.	

RH 7/4/07

For Commissioner of Income-tax in Mysore.

onday, the 14th day of December 1936.

Present.

Mr. Justice L. B. Plumer, Chief Judge,

Mr. Justice C. S. Doraswami Iyer,

and

Mr. Justice D. A. Rama Rao.

This civil referred case coming on for final hearing on the point of law referred to it, before the Full Bench on Monday, the 1st day of December 1936, and after hearing the arguments of Mr. L. A. Gonindaraghava Iyer, advocate for the assessee company, and those of Mr. K. Shankaranarayana Rao, Government Advocate, for the Commissioner of Income Tax in Mysore, the court expressed the following:-

O P I N I O N.

The CHIEF JUDGE:- In the matter of a reference to this Mysore ~~Chief~~ court under Section 60(2) of the Mysore Income Tax Regulation V of 1933 there being a difference of opinion between the learned Judges who constituted the bench for the hearing of the reference the point in difference has been referred to the Full Bench under Section 15(3) of the Mysore Chief court Regulation I of 1334.

The questions referred to this court under section 60(2) of the Mysore Income Tax Regulation V of 1933 are fully set out in the judgment of the two learned judges constituting the Bench. In respect of them, both the learned Judges agree in holding that in computing the "total income" of an assessee for the purpose of assessing and charging either income-tax under Schedule I of the Income Tax Regulation V of 1933 or additional income-tax otherwise known as "super-tax" under Schedule II of the Regulation the definition of total income as expressed in section 4(1) of the Regulation (while the location of the [illegible]

arried on in British India even though such income has not b
eceived into the Mysore State by the assessee, but whereas
.y. Justice Doraiswami Iyer holds that while the expression "tot
income" for income-tax is the same as the expression "total in-
come" for super tax, from the income assessable to income tax
income earned in British India must be excluded by virtue of se
tion 10, Clause 4 of the Regulation and as section 10, Clause
is not included among the exceptions specified in section 50(1)
of the Regulation the provisions of the said section 10(4) are
as applicable to the assessment of additional income tax, i.e.
super tax as to the assessment of income tax and he holds that
as a result the income earned in British India must first be de
ducted in order to ascertain if the balance is chargeable with
super tax by virtue of its exceeding Rs. 50,000/-: if it does so
exceed then the excess over Rs. 50,000/- is the amount chargeabl
to super tax. Mr. Justice Ramaswami on the other hand holds
that as the total income as defined by section 4(1) is a mix-
ture of both the Mysore and the British India incomes the total
income if it exceeds Rs. 50,000/- becomes, on the application to
it of the provisions of Schedule II, split up into the Rs. 50,000
exempted from super tax and the excess portion is liable to it;
he would then and only then apply section 10(4) and deducting
the British India income from the Mysore income he would hold
liable to super-tax the two incomes in the proportion in which
they stand to the total income.

With respect this view is in my opinion fallacious in
that it fails to give effect to the main underlying characteris-
tic and intention of the Income Tax Regulation, viz., that only
income accruing in or received into Mysore within the meaning of
section 4(1) of the Regulation or which can be deemed to have
accrued in or been received into Mysore within the meaning of

Income Tax, while in the matter of income accruing in British India Section 10(4) expressly provides that it shall be excluded from liability to be charged, and that express provision is retained in section 58 Clause I which excludes it from the ~~expressxxx~~ exceptions specified therein, it logically follows as it seems to me that income earned in British India not received into Mysore can no more be used to make Mysore income chargeable to additional income tax than it could be used to swell the amount of Mysore income chargeable in the first place to income tax.

To hold otherwise would without any violence to probabilities make an income too small to be even liable to "income tax" liable to "super tax", i.e. additional income-tax", which is an absurdity.

My answer to the reference is therefore that Mysore Income not otherwise chargeable to supertax cannot be made liable to it by adding to it income earned and received in British India. If in order to ascertain the total income the effect of section 18(1) is to necessitate taking both incomes into consideration, and I am not at all to be held to agree that that is its proper interpretation and legal effect, then to ascertain how much of that total income is chargeable to additional income tax the amount earned in British India must first be deducted and if the balance, or the Mysore Income, exceeds ~~Rs~~ 50,000/- then the excess is the amount and the only amount chargeable to supertax.

Sd/ R. B. Plumer,

CHIEF JUDGE.

Mr. Justice C. R. Doraswami Iyer:-

I have already stated my view on the points raised, and I have nothing more to add, except to express my concurrence with the conclusions of the learned Chief Judge.

Sd/ C. R. Doraswami Iyer,

J U D G E.

Mr. Justice D. A. Rama Rao:-

In view of the opinions expressed by the learned Chief Justice and Doraswami Iyer, J. I have given my most careful consideration and further examined the position take by me, but with great respect I am unable to come to the conclusion that have been arrived at.

So long as Section 13(1) and Schedule II which is to be read as part of Section 55 remain in the Mysore Statute as at present worded it seems to me that no other interpretation than the one I have given is possible. We cannot keep Section 13(1) in the Regulation and at the same time have in Mysore conditions similar to those obtaining under the British Indian Act in which that Section is wanting. If by reason of Section 13(1) we agree to increase to increase the total income by including in it the British Indian income and to thereby raise the rate for income tax, as we must do in accordance with Section 3 read with Schedule I, the very same total income under Sections 55 and 56 necessarily brings in the further consequence which cannot be ignored of liability for super-tax.

The one other point to which I have now to refer is the mmmm suggested procedure to first deduct the British Indian income from the total income before deducting the statutory allowance of Rs. 30,000/-. That however in my opinion clearly contravenes the express direction in Schedule II read with Section 55, which is mandatory, for Rs. 30,000/- is part of the total income and is to be cut out of the total income; if British Indian income is first deducted from the total income what remains is only the Mysore income so that if Rs. 30,000/- is to be deducted thereafter from the said balance it will be out of the Mysore income alone and not out of the total income as contemplated in Schedule II. The words "so far as may be" in Section 73 of Chapter IX of the Regulation make it imperati

that the provisions of the prior chapters can be made applicable without prejudice to those in Chapter IX and Schedule II relating to the imposition of super-tax.

The mere process of calculation to give effect to the principle is of secondary importance and should not be allowed to obscure or be an impediment to the solution of the question; it is immaterial whether the circumstances make that process one of addition or subtraction or rule of proportion. In my opinion express section is necessary for resorting to ordinary arithmetic in order to put the principle into operation when it is correct and has to be adopted.

In other respects I have nothing more to add to my earlier judgment and I do not find sufficient grounds to modify or alter the views therein espressed.

Sd/ D. K. Rama Rao,
J U D G E.

With these opinions and the dissenting opinion of Mr. Justice D. K. Rama Rao, the reference is returned to the referring Bench to answer the question before it.

Sd/ R. B. Plumer,
CHIEF JUDGE.

Sd/ C. S. Doraswami Iyer,
J U D G E.

Sd/ D. K. Rama Rao,
J U D G E.

KCS.

Civil Referred Case No. 9 of 1924 - 25.

Tuesday, the 19th day of January 1926.

Present.

Mr. Justice C. S. Doraswami Iyer,

and

Mr. Justice D. K. Rama Rao.

This civil referred case coming on for final disposal on Monday, the 18th day of January 1926, the court pronounced the following:-

O R D E R.

In accordance with the opinion of the Full Bench, the reference of the Income Tax Commissioner will be answered thus:-

(a) In the case of a business carried on partly in British India and partly in Mysore, supertax is chargeable only on the assessable income in Mysore.

(b) and (c) The cumulative effect is that which is indicated in the judgments of the majority of the Judges of the Full Bench. From the total income as computed in accordance with Section 16(1), the statutory deduction of ₹ 50,000/- has to be made, and on so much of the balance as may represent the actual income derived in Mysore and taxable under section 58(1), supertax is leviable.

(d) In view of the opinion expressed in the judgments and of the answers given above in regard to questions (a), (b) and (c), this

this question calls for no specific answer.

We make no order as to the costs of this reference.

Sd/ C. S. Doraswami Iyer,

J U D G E.

Sd/ D. K. Rama Rao,

J U D G E.

" C O P Y "

For Commissioner of Income Tax
in Mysore.

KGS.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Tuesday, the 19th day of January 1926.

Present.

Mr. Justice C. S. Doraswami Iyer,

and

Mr. Justice D. K. Rama Rao.

Civil Referred Case No. 10 of 1924 - 25.

In the matter of a reference under Section 66(2) of the Mysore Income Tax ~~Commissioner~~ Regulation V of 1923, by the Commissioner of Income Tax in Mysore (received with his No.663 of 1924-25, dated 12th June 1925) submitting for the decision of this court a statement of the case relating to the assessment of the income of the Swadeshi Mills Company Ltd., Bombay to supertax in Mysore for the year 1923-24.

O R D E R.

The assessee in this case is the Swadeshi Mills Co., Ltd., Bombay, and the question raised, in this reference, by the Income Tax Commissioner, so far as super-tax is concerned, are the same as those set out in (a), (b) and (c) of paragraph 2 of the judgment of C. S. Doraswami Iyer, J. in Civil Referred Case No. 9 of 1924-25.

Additionally the Commissioner has referred also another question relating to the income-tax payable by the assessee, which runs as follows:-

" Whether a person whose assessable profits in Mysore are computed under Rule 33 of the Mysore Income Tax Rules, 1923, by following the rule of proportion can claim to set off the loss, if any, incurred in a portion of the business carried on in Mysore against the income so fixed, Mysore income is to Mysore turnover, as total income is to

to total turnover".

The questions relating to super-tax are dealt with in our judgments in Civil Referred Case No. 9 and for the reasons therei stated our answers are the same as those recorded in that judgment.

In regard to the question of income-tax, the Commissioner is of opinion that the points raised in the reference is one of fact, but as it challenges the principle on which the assessable income is to be determined and assessment fixed, we are inclined to treat it as involving a question of law.

The facts shortly stated are these:-

In the return submitted by the Company, the amount of profits assessable to income-tax in Mysore was given -- Rs 12,371/- and that was arrived at, by deducting Rs 7,140-10-2, representing the loss incurred by the Company in their ginning factory at Davangere, from the total proportionate profit of Rs 19,511-10-2, assessable on the turnover-percentage-principle by multiplying the total profits earned in British India and Mysore, by the turnover in Mysore, and dividing the product by the total turnover in both areas. In the calculation of the total profits, the profit and loss accured or suffered in Mysore have been included. The assessing officer fixed the Mysore profits on which income-tax was payable by the Company in Mysore at Rs 19,511-10-2, on the turnover method refusing to set off the loss of Rs 7,140-12-2 sustained by the Davangere Factory on two grounds:-

(1) That the Davangere factory was intended to feed the Mills at Bombay,

and (2) that the total profits taken as the basis of assessment in Britsh India, the loss aforesaid has been taken into account.

and this decision was confirmed in appeal by the Income Tax Commis

Commissioner.

Rule 33, printed on page 77 of the Mysore Income Tax Manual, prescribes the mode by which the amount of income, profits or gains accruing or arising to non-residents from or through business connection in Mysore should, for purposes of income-tax, be calculated, in case the actual amount of such income profits or gains cannot be ascertained. In the present case the assessee furnished for the year of assessment a return from which the assessable income in Mysore could not be separately ascertained except by having recourse to the method prescribed in Rule 33. If the actual income from the Mysore portion of the business was separately shown or could be ascertained from the books of the assessee, then the assessable income, for the levy of Mysore income tax might be arrived at by subtracting the allowances and deductions permissible under the Regulation, and under section 24, the assessee will be entitled to have the amount of loss set off in computing the income. But where the Mysore portion of the income, as well as the Mysore portion of the ~~xxxxxx~~ loss are both taken into account in computing the total all India income, and the assessing officer is driven to adopt one of the modes prescribed in Rule 33, for determining how the profits in Mysore should, in the circumstances be ~~xx~~ calculated, and in his discretion he fixes as the assessable income in Mysore a percentage of the turnover of the business done in Mysore, we do not see how the assessing officer can be said to have acted contarary to law, or in an arbitrary or unjust manner. In our opinion, the set off claimed by the assessee need not necessarily be made, consistently with the provisions of the Regulation, in the mode

or computation adopted by the assessing officer, for fixing the assessable income ~~of~~ in Mysore, and we answer the reference accordingly.

We make no order as to the costs of this reference.

Sd/ C. S. Doraswami Iyer,

J u d g e.

Sd/ D. K. Rama Rao,

J u d g e.

" C O P Y "

For Commissioner of Income Tax
in Mysore.

KGS.

D.O.No. C.315
28.

OFFICE OF THE COMMISSIONER OF INCOME-TAX IN MYSORE

Bangalore.....27.th....September.....*1928*.

$ 1494/Fl

FINANCIAL
29 SEP. 1928
No

Dear Sir,

I send herewith the Unofficial file dated 10th December 1927 received with your Memo No. Fl. U.O.62-27 relating to the computation of total income under Section 16 of the Mysore Incometax Regulation as it is learnt that the same was required for reference in your office.

2. My opinion on the subject is almost ready and it ~~shall~~ will be submitted to Government if the file is returned to me after you have done the needful.

OFFICE OF THE COMMISSIONER OF INCOME TAX IN MYSORE.
Recd. OCT 4 1928
No. C315
Enclosures, if any Nil.

Yours sincerely,

J Majagopal

B. Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to the Government
of His Highness the Maharaja of Mysore,
Financial Department,
Bangalore.

2708/Fl dated 3.10.28
Returned with compliments to the Commr of Income Tax. 3 files kicked off marked A, B & C on the enclosure have been retained in this office.

Sd. 4.10

Mr A.V.K
for draft
SPR 4/10

B.O
M. Varadaraja Iyengar
for Fl: Secy to Govt

Enclosures to C.315/27-28.

1. Correspondence ending with diary No/. 2049(with encls.)
2. Amendment of the Incometax Regulation as regards the provisions about 'Supertax (Note).
3. Note ending with 4225./
4. Extract from Accountant - Tax Supplement.
5. Judgment in C.R. Case No. 9 of 24-25 (with encls.)
6. No. Fl. 3233. Draft letter to Govt. Advocate.
7. Correspondence ending with Diary No/. 3221.
8. Copies of resource estimates for Jan. & Feb. 26.
9. Judgment in C.R. Case No. 9 of 24-25 (Typed copy).
10. -do- 9 and 10/24-25 (with opinions of Judges etc.
11. The Mysore Supplemental Gazette, dated 25th Oct.1923.
12. -do- 14th Feb. 1924.
13. -do- 15th May. 1924.
14. File No. 46-23/Sl. Nos. 3-15.
15. I.T. File 1-19 (Re. Reciprocal arrangement arising out of the I.T. Regn.) Printed.
16. I.T. File No. 11 of 1926.
17. Correspondence ending with Diary No. 2180/Sl. No.5.
18. Statement of Cos. and their incomes.
19. File No. 55-24/Sl. No.1.
20. -do- 54-25/Sl. Nos. 1 & 2.
21. Diary No. 1336 with encls.
22. File No. 1-24/Sl. Nos. 5-8.
23. File Nos. 1-24/Sl. Nos. 1-4.
24. Judgment in C.R. Case No.9/24-25 (Printed Copy).
25. Fl. 4490.

To

The Financial Secretary to the Government of Mysore.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Thursday, the 5th day of November 1925.

PRESENT

Mr. Justice C. S. Doraswami Iyer,

and

Mr. Justice D. K. Rama Rao.

Civil Referred Case No. 9 of 1924-25.

In the matter of a reference under Section 66 (2) of the Mysore Income-tax Regulation, V of 1923, by the Commissioner of Income-tax in Mysore (received with his No. C. 669 of 1924-25, dated 13th June 1925), submitting for the decision of this Court a statement of the case relating to the assessment of the income of the Central India Spinning, Weaving and Manufacturing Company, Ltd., Bombay, to super tax for the year 1923-24.

Heard.—Mr. L. A. Govindaraghava Iyer for the assessee Company.
Mr. K. Sankaranarayana Rao, Government Advocate, for Government.

ORDER.

Mr. Justice C. S. Doraswami Iyer.—This is a case of reference under Section 66 (2) of the Mysore Income-tax Regulation, V of 1923, in the matter of the assessment of the Central India Spinning, Weaving and Manufacturing Company, Ltd., Bombay, to super tax for the year 1923-24.

2. The Company in question having its registered office in Bombay, carries on business partly in British India and partly in Mysore. The Commissioner for Income-tax has held that the Company is liable to pay both income-tax and super tax on the income accrued in Mysore, which he assessed at Rs. 24,699. The Company has accepted, the assessment for income-tax but has demurred to its liability to assessment for super tax, on the ground that the taxable income from its business in the State is less than Rs. 50,000. On the application of the assessee the Commissioner has made this reference raising the following questions for decision:—

(*a*) Whether the effect of Section 58 (1) of the Mysore Income-tax Regulation, V of 1923 is to make Section 10 (4) applicable to the charging of super tax without any qualification?

(*b*) If the above question is answered in the affirmative, what is the cumulative effect of Sections 55, 56 and 58 (1) of the Regulation, and is it such as to require the successive deduction from the total income [as defined in Section 16 (1)] of the statutory allowance of Rs. 50,000 and of the British Indian income?

(*c*) Whether only the amount left over after the above deduction is assessable to super tax?

(*d*) What is the effect of the words "save as hereinafter provided" in Section 4 (1), and of "so far as may be" in Section 58 (1), and do they permit of the interpretation put by me on Sections 16 (1) and 55, 56 and 58 in the decision now objected to by the petitioners?

3. For a proper understanding of the questions raised we have to consider the provisions of the Regulation bearing on the subject of assessment, not only to super tax but to income-tax also. Under Sections 3 and 4, income-tax has to be charged at the rate or rates specified in Schedule I, in accordance with and subject to the provisions of the Regulation on all income, profits or gains as prescribed or comprised in Section 6, accruing or arising or received in Mysore, or deemed under the provisions of the Regulation to accrue, arise or to be received in Mysore. Section 6

enumerates the heads of income so chargeable and Sections 7 to 12 describe the manner in which the charge is to be made in the case of each of these heads, subject to the allowances and deductions specified thereunder. Then follow exemptions of a general nature (Section 14) and special exemptions in respect of Life Insurance premia, and other payments of similar kind (Section 15). The income computed in accordance with the provisions of the above sections forms the basis of taxation and is generally known as taxable income, *i.e.*, income chargeable to income-tax.

4. This taxable income is, however, different from the total income within the meaning of Section 2 (15), which is to be computed in the manner laid down in Section 16 in order to determine the liability of a person to taxation (*i.e.* whether his total income amounts to a minimum of Rs. 2,400) and the rate at which the tax is to be charged under Schedule I. In such total income is to be included among other deductions, any sum representing the profits or gains in British India of a business carried on both in British India and Mysore, which under Section 10 (4) is not chargeable to income-tax in Mysore, that is to say, while the said sum is not actually subject to income-tax here, it has to be included for the purpose of determining liability to such tax, and the rate to be charged on the taxable income.

5. This distinction between the taxable income and the total income has to be borne in mind in construing the provisions of Regulation, V of 1923, in this reference, in their application to super tax. Under Section 55, super tax is payable on the total income of the previous year at the rates laid down in Schedule II. Under Section 56, the total income for purposes of super tax shall, subject to the provisions of Chapter IX, be the total income as assessed for purposes of income-tax. The result appears to be that while the total income computed for income-tax is to be regarded as the total income for super tax purposes, the actual income liable to super tax is under Section 58 to be determined in accordance with the provisions of the Regulation, excepting those contained in the provisos, sub-sections and sections mentioned in Section 58 (1). Among those excepted provisions is not included Sub-Section (4) of Section 10, and the provisions of this sub-section have therefore to be taken into account in computing the amount liable to super tax under our Regulation. As the sub-section allows deduction of profits or gains accruing on transactions in British India in respect of a business carried on there as well as in Mysore, super tax is assessable only on the actual income derived by the business in Mysore, though the liability to such tax is dependent on the total income of the business derived both in British India and in Mysore as computed in the manner aforesaid. If such total income exceeds Rs. 50,000 super tax is leviable on such excess income, as per Schedule II read with Section 55, reduced by the amount representing the profits or gains of the portion of the business carried on in British India in conformity with the provisions of Section 58 (1), as explained above. Such a construction is consistent with the provisions of Section 4 (2) and Section 42 (1), and the reciprocal arrangement made between the Government of India and the Government of Mysore for affording relief from double income-tax, in the case of assessees carrying on business both in British India and in the Mysore State. Section 4 (2) applies to profits or gains accruing or arising without Mysore to a person residing within, and Section 42 (1) to profits or gains accruing or arising through or from any business connection in Mysore to a person residing without. In either case such profits or gains are to be deemed as accruing or arising in Mysore, and are chargeable to income-tax here. The reciprocal arrangement referred to above is given effect to in Mysore by the provision contained in Section 10 (4) of the Regulation and in British India by special instructions of the Government of India conveyed in their letter of the Financial Department, No. 2134, dated 4th June 19-4, embodied in paragraph 14, p. 86 of the Mysore Income-tax Manual. The terms of this arrangement so embodied coupled with the absence of any specific provision in the returns prescribed under Section 22 of the Regulation for showing the deductions of earnings in British India, of a business carried on partly there and partly here would seem to lend colour to the contention that Section 10 (4) was not intended to apply to residents in British India carrying on such business:

6. Mr. L. A. Govindaraghava Iyer who argued the case with much ability and clearness, goes one step further, and urges that Section 10 (4) was designed

merely for ascertaining the income of a business in Mysore carried on partly here and partly in British India, by the simple process of excluding the amount of profits or gains appearing to the assessing officer to be due to transactions in British India. Such a construction, he points out, will be in accord with Sections 3 and 4 of the Regulation, under which according to the decision, cited in Ali Imam *vs.* Income-tax Commissioner [(85 Indian Cases 164) (Patna)], and relied on by the learned advocate, the income earned outside the taxing State shall not be chargeable in that State unless (1) it is received within that State, or is deemed to accrue or arise or to be received therein or (2) unless it constitutes the profits or gains of a business actually received in that State within the meaning of Section 4 (2). As, in the present case, the profits or gains of the assessee, in so far as they relate to the transactions in British India could not be deemed to have accrued or arisen in Mysore, nor received there, he urges, that they could not be taken into account in computing the total income for assessment purposes in Mysore. Whatever may be the force of this line of argument in its application to the provisions of the British Indian Income-tax Act, it cannot prevail here in view of the express provisions of Section 16 (1) of the Mysore Income-tax Regulation, V of 1923, wherein it is expressly stated that in the case of profits or gains in British India of a business carried on both there and in Mysore, the deduction admissible under Section 10 (4), in respect of the earnings in British India, shall be included for computing the total income in Mysore. It may be observed that although in Section 9 (3) of the previous Regulation of 1920, there was a provision identical in terms with that of Section 10 (4) of the present Regulation, there was not in the computing section (Section 13) of that Regulation, as there is in Section 16 (1) of the present Regulation, any provision for including the deduction aforesaid, for determining the total income. This change in the language of the present Regulation, to be construed as connoting a change of intention on the part of the legislature in this respect. In construing a taxing statue the court has to give effect to the intention of the Legislature as gathered from the language employed, having regard to the context. It is not open to the court "to narrow or whittle down the operation of the Act by considerations of hardship, business convenience or the like" See Attorney General *vs.* Carlton Bank (1899), 2 King's Bench, 158, page 164. I have therefore to hold that as the Regulation stands at present, the profits or gains earned in British India by a business partly carried on there, and partly here, should be included for ascertaining the total income of an assessee in Mysore.

7. At the same time in construing and applying fiscal statutes, the observations of Lord Cairns in the leading case of Partington *vs.* Attorney General (1869) L.R. 4 H.L. 100 have to be borne in mind, *viz.*:—

"As I understand the principle of all fiscal legislation, it is this. If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute where you should simply adhere to the words of the statute."

This principle was emphasized, in a later case, by Lord Blackburn in Coltness Iron Co. *vs.* Black (1881) 6 A. C. 315, in the following words:—

"No tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden on him. But when that intention is sufficiently shown, it is not open to speculate on what would be the fairest and most equitable mode of leving that tax."

There are also several English and Indian decisions to the same effect. For instance in Killing Valley Tea Co. *vs.* Secretary of State for India (48 Calcutta 157) it was pointed out that "the Crown seeking to recover the tax must bring the subject within the letter of the law, otherwise the subject is free however much within the spirit of the law the case might appear to be. There can be no equitable construction admissible in a fiscal statute: the benefit of the doubt is the right of

the subject." In another case Sundar Das *vs.* Collector of Gujarat (3 Lahore 349) it was remarked thus :—

"It is a sound principle that the subject is not to be taxed without clear words to that effect; and that *in dubio* you are always to lean against the construction which imposes a burden on the subject." In our court Plumer C.J. cited with approval the principle enunciated in the above cases as to the inadmissibility of any equitable construction in a fiscal statute like the Income-tax Regulation. See 29, Mysore Chief Court Reports 107, p. 111.

In view of these well established canons of interpretation, I have to construe the provisions of the Income-tax Regulation, by the language employed in the relevent sections bearing on the subject of super tax without regard to equitable considerations or the intendment of the legislature in the matter of assessment.

8. As already stated the total income for super tax is the same as the total income arrived at for income-tax purposes, but the income assessable to super tax has to be fixed having regard to the provisions of Section 58 (1). From such assessable income should be excluded the income of the business earned in British India, and this result follows from the non-inclusion of Section 10 (4) among the exceptions specified in that section. Although the charging section (Section 55) for purposes of super tax and Schedule II would permit of the levy of super tax on the total income of the business both in British India and Mysore in excess of Rs. 50,000, still the non-inclusion of Section 10 (4) in Section 58 (1) as aforesaid would seem to call for the exclusion of the whole of the British Indian income from such excess, in computing the actual income liable for the levy of super tax in Mysore. This will practically lead to the result that super tax will become payable in Mysore, only when the Mysore portion of the assessable income is in excess of Rs. 50,000 and the tax will be leviable on only such excess.

9. I have had the advantage of reading the judgment of my learned brother which he is about to deliver. I am still unconvinced as to how the Mysore income of a non-resident foreigner is to be charged here, for super tax, when such income does not exceed Rs. 50,000. There is no provision in the Regulation or the rules framed thereunder, so far as I can see, for the adoption of the course as suggested, or for allocating between British India and Mysore, the statutory deduction of Rs. 50,000 referred to in Schedule II, or again for applying the rule of proportion as suggested, for determining the balance of Mysore income chargeable to super tax. It is true that the *total income* as defined in our Regulation is, as observed by my learned brother, a homogeneous compound of both the British Indian and Mysore income, and that in the sum of Rs. 50,000 deductable under Schedule II, a portion of both these incomes is included, but if we are to follow the accepted canons of construction, as I understand them, it is not for us to evolve a scheme for separating the parts of the homogeneous compound, and assigning rateable values to fill up the hiatus in the taxing statute.

"In a case of reasonable doubt (as, with respect, there seems to be here), the construction most beneficial to the subject is to be adopted."

See Oriental Bank Corporation *vs.* Wright (1880, 5 A.C. 842, p. 856 where it was observed that the intention to impose a charge on the subject must be shown by clear and unambiguous language. In Pryce *vs.* M. C. & R. Companies (1879) 4 A.C. 197, Lord Cairns observed that "inasmuch as there was no apriori liability in a subject to pay any particular tax, nor any antecedent relationship between the tax payer, and the taxing authority, no reasoning founded on any supposed relationship of the tax payer and the taxing authority could be brought to bear upon the construction of the Act, and therefore the tax payer had a right to stand upon the literal construction of the Act, and therefore the tax payer had a right to stand upon the literal construction of the words used, whatever might be the consequences."

These, and the authorities referred to in the earlier portion of my judgment make it clear, as I think, that unless a subject can be brought within the letter of the law, and not within its spirit, he is freed from liability, as he has the right to the benefit of the doubt. In the present instance, the question, so far as can be gathered, is not merely one of doubt. Section 10 (4) being admittedly a factor to be considered both for income tax and super-tax chargeable in Mysore, it seems to

follow that the conjoint effect of the words "subject to the provisions of this chapter" in Section 56, and the expressions "all the provisions of this Regulation except" and "so far as may be" in Section 58 (1), coupled with the non-inclusion of section 10 (4) in the excepted portion in the latter section is, that for determining the income chargeable to super tax in Mysore, the simple process of excluding the British Indian income from the total income is to be adopted before making the statutory deduction of Rs. 50,000 contemplated by Schedule II. In any case it seems to me that the courts are not to go outside the letter of the law, in construing an enactment of the kind for preventing what may be thought of as a possible evasion of its unexpressed intentions. Unless there is a definite liability imposed by clear terms, no question of obligations can arise. For these reasons I am obliged, on a construction of the relevent provisions of the Regulation, to come to the conclusion I have arrived at, in regard to the assessability to super tax in Mysore in a case of the kind now under reference.

The answers to the points referred to by the Income-tax Commissioner must, in these circumstances, await our final decision.

C. S. DORASWAMI IYER,
Judge.

Mr. Justice D. K. Rama Rao.—This case raises an important and interesting point which lies in a narrow compass. I do not propose to recapitulate the facts or the several sections of the Regulation which are lucidly and carefully cited by my learned brother and it is sufficient for my purpose to add a few words. I cannot discover any contridictions in the provisions of the Regulation for the levy of the income-tax and super tax. At the outset it is as well to refer to the confusion very often caused by the use of expressions like taxable, chargeable, assessable, and liable to tax, for they are applicable to two different stages in calculation. We have to bear in mind the distinction between *rating* for purposes of taxation and the actual *collection* of the tax; the one determines the relative rank or position of the assessee and the other the amount of tax to be paid by him on the basis of the rate so fixed. The rate is fixed on the total income while the actual tax to be collected is calculated at that rate upon only the *balance* of the total income after certain deductions specified in the Regulation which somewhat vary in details with regard to income-tax and super tax. The total income according to Sections 2 (15) and 16 (1) include also the British Indian income but when the tax is actually levied it is deducted as per provision in Section 10 (4). This is so both for income-tax and super tax. The taxing section for income-tax is Section 3 read with Schedule I and that for super tax is Section 55. The only difference for our present consideration between the income-tax and super tax is that whereas the entire income is liable to ordinary income-tax, the first Rs. 50,000 is exempted from super tax which is levied only on super income, meaning thereby the excess over the first Rs. 50,000.

It follows therefore that a Company is liable to be super taxed when its total income exceeds Rs. 50,000 irrespective of what portion of that income is derived in the Mysore State; in other words even if the income earned in the State is less than Rs. 50,000 it is *prima facie* to be taxed provided the total income calculated under Section 16 (1) exceeds Rs. 50,000. Neither of the Sections 10 (4) and 16 (1) is excluded under Section 58 and both are operative and have to be enforced. The greater part of the argument on behalf of the Company was directed to establish the proposition that since no tax is to be collected on the British Indian income unless it falls within the purview of Section 4 it could not be taken into consideration even for determining the *rate* as that would tantamount to taxing it indirectly. If that is all the contention it is against the clear intention of the Legislature, for the saving clause in Section 4 is directed to give full effect to Section 16 (1) which the Legislature has deliberately added. Admittedly no aid can be derived from the decisions and laws in other countries; each has its own statutes and arrangements. It is not for the courts to find reasons for the policy of the Legislature especially when interpreting the income-tax statutes.

"The Legislature must be intended to mean what it has plainly expressed, and consequently there is no rule for construction"—Maxwell on interpretation of

statutes; sixth edition, page six. Where the words of the section admit of no ambiguity judges are not entitled to add to or take from them—per Harrington J. in 27 Calcutta 724 (756). The scheme of the Regulation whether in respect of income-tax or super tax is repugnant to the theory that British Indian income could not be considered for purposes of rating. After all I cannot understand why we should fight shy of the principle that it is the capacity of the assessee based on his total income that should be the criterion for fixing the rate. The very graduation of rates for income-tax, and the high standarad of income requisite to give rise to liability for super tax go to indicate that the financial capacity as judged from income is all important. The higher the income the greater is the rate for income-tax or the liability for super-tax. If the liability for super tax is not determined by enforcing Section 16 (1) a person whose income for instance is Rs. 45,000 in Mysore and Rs. 45,000 in British India could successfully evade super tax both in Mysore and in British India.

Thus, so far as the enforcement of both Sections 10 (4) and 16 (1) are concerned my learned brother and I are of the same opinion ; but with regard to the application of Schedule II and Section 10 (4) and the conclusion to be arrived at, after carefully considering the matter, with all deference, I feel constrained to differ from him. My endeavour is to remove the conception that super tax will become payable in Mysore only when the Mysore portion of the income exceeds Rs. 50,000. Under Schedule II the "Excess over Rs. 50,000 of *total income*" is liable to super tax. Section 16 (1) and Schedule II deal with the total income and Section 10 (4) separates the State income from British Indian income for purposes of actual taxation. These several stages are very important and should be carefully and strictly followed, and any construction which facilitates the evasion of the statute should be avoided. Now the total income as determined under Section 16 is a mixture of both the Mysore and British Indian incomes and while it is in that condition the whole and every part of it is made up of both the Mysore and British Indian incomes. If in this state of totality of the income the provisions of Schedule II are applied, the total income is split up into two portions, (*a*) the first Rs. 50,000 of the total income which is exempted from super tax and (*b*) the balance of the total income, or super income if I may so style it, which is liable to super tax. It is obvious that both the figures (*a*) and (*b*) have all the characteristics of the totality, that is, every part of it comprises both the Mysore and British Indian incomes. The function of Section 10 (4) commences at this stage and that function is to separate the Mysore portion of the total income from the British Indian income, while Schedule II divides the total income into two parts *without* any reference to the locality, namely Mysore and British India. It is very important to note this essential difference between the functions of Schedule II and Section 10 (4), for though their application has the effect of partitioning the total income their aim, scope and effect are quite different. Perhaps it may be stated that Schedule II and Section 10 (4) cut the total income in different plans, one horizontally and the other vertically. In the case of income-tax, Section 10 (4) is applied once for all and hence there is no difficulty, but when it is taken up in connection with super tax some confusion is likely to rise since it will have to be applied both before and after deducting Rs. 50,000 in accordance with Schedule II.

To take an illustration : If the Mysore income is Rs. 20,000 and the British Indian income Rs. 80,000 the total income comes up to one lakh. Out of this one lakh the first Rs. 50,000 is first to be deducted in compliance with the imperative direction in Schedule II to find the excess or super income before any further deduction or deductions can be thought of. There can be no reason whatever to treat the first Rs. 50,000 in Schedule II as Mysore income ; for it would be equally pertinent for the Crown to contend that the whole of the said first Rs. 50,000 is to be treated as the British Indian income alone. As explained above, the total income, and every part of it is made up of both kinds of income, so that in every unit of coin in one lakh as well as in the excess or super income of Rs. 50,000, one-fifth portion is Mysore income and four-fifths British Indian income. The function of Section 10 (4) is to find out the value of the *Mysore portion* of the super income which is liable to super tax ; that portion obviously is one-fifth of Rs. 50,000 or Rs. 10,000. In British India also, under similar conditions super tax would be liable on four-fifths of Rs. 50,000 or Rs. 40,000. The total amount of super tax thus levied in both

the countries put together would be only on the excess contemplated in Schedule II.

The principles seem to be clear. Whatever the reasons or policy may be, the rate of income-tax or super tax is determined on the capacity of the assessee as judged from his total income including British Indian income, but actual collection is made only on the Mysore portion after deducting the British Indian portion. Now such a deduction can be made only once, and not more than once merely on the score of references made to deductions in different parts of the Regulation. The object is not to tax the British Indian portion and thereby obviate any hardship from the probable double taxation by levying the tax both in Mysore and British India, but it is not meant that the same British Indian income should be deducted more than once in different forms. Rupees. 50,000 referred to in Schedule II is not an arbitrary figure independent of the total income, but it is its first portion ; that being so there can be no reason to deduct the said portion once again from the excess or balance. This appears to me to be the only possible and reasonable interpretation that can be given if we are to give effect to the provisions of the Regulation and not evade them. When I suggested my ideas to my learned brother I might have safely dispensed with the word *equitable*, for in my opinion there is no application of any rule of equity in its *technical* sense ; in fact if equity is applied at all in this case by my interpretation, I cannot see how it is not in the favour of the subject, for the whole of Rs. 50,000 might as well be treated as the British Indian income if the opposite contention is to be pressed. The language of the Regulation is plain and unambiguous for Schedule II clearly makes the excess over Rs. 50,000 chargeable with super tax. Deductions are permissible only to the extent authorised and no more. While we cannot tax the subject beyond the expressed provisions we cannot also " Whittle down " the tax due to the Crown by giving deductions for unauthorised items ; both cases are liable to the principle of strict construction. If we concede, as we must by reason of the express words in Schedule II, that Rs. 50,000 is part of the *total income* and if we further concede that the said portion of the total income, includes British Indian income, then there can no ground whatever to deduct the British Indian income in *its entirety from the balance left*. The total income is a homogeneous compound of both the incomes, and if Section 10 (4) is to be enforced the separation of the two incomes thereunder can be possible only by fixing their values in the whole as well as in the parts only as explained above. The logical consequences, in my opinion, must necessarily lead to the result arrived at by me and there seems to be no escape from it.

If as I said above the wording of the enactment is plain and unambiguous it is not necessary to seek for the object and intention of the Legislature by consideration of matters outside the Section itself—Sir John Edge C. J., in Indian Law Reports 16 Allahabad 136 (152). When 'the words of the two sub-sections were unambiguous' the court felt itself bound to give effect to them—24 Madras 195 (199).

" To carry out effectually the object of a statute it must be so construed as to defeat all attempts to do or to avoid in an indirect or circuitous manner that which it has prohibited or enjoined " Maxwell, page 207.

" The courts are to give the statute a reasonable construction. They will not readily presume, out of the respect and duty to the lawgiver, that any very unjust or abused consequence was within the contemplation of the law. But if it should happen to be too palpable in its direction to *admit of but one construction* there is no doubt, in the English law, as to the binding efficacy of the statute. The will of the Legislature is the supreme law of the land, and demands perfect obedience." Ibid, p. 460.

In 8 Mysore Law Reports p. 60 the same rule of construction was enunciated by the esteemed Judges, C. G. Plumer, C. J., and A. Rámachandra Iyer, J., who observed.

" So construed, the provisions of..... .....would be completely nullified and the Legislature would stand convicted of having perpetrated the manifest absurdity of having contradicted in one breath what it had asserted in the previous breath. It is clear that we should not be justified in applying such a construction, if we could find any other fair and reasonable construction which will reconcile the provisions of..... .....with the provisions of..... .....".

The alternative interpretation of giving deduction to the *entire* British Indian income in *addition* to the first Rs. 50,000 of Schedule II was not mooted by the learned counsel for the Company, presumably, as I think, because it could not be maintained. I am unable to agree with the learned Government Advocate that the non-inclusion of Section 10 (4) in Section 58 is an omission or a weakness in the case for the Crown. It seems to me that Section 10 (4) had necessarily to be omitted in Section 58 for the simple reason that neither kind of tax can be *collected* (as opposed to rating) on the British Indian income as such, unless it falls within the purview of Section 4. In my opinion the construction suggested is defective in as much as it fails to give effect to the charging provisions in Sections 55 and Schedule II and allows deductions beyond what the Regulation authorises. No flaws have been pointed out in the decision I have arrived at, which, while it prevents an individual liable to super-tax in Mysore and British India under similar conditions (as it really is at present) from evading payments in both the countries, also extends to him the requisite protection against double taxation; if this is so, perhaps there may be no need for any reciprocal arrangement on the point.

Answers to the questions of the Referring Officer can be formulated only after the matter is finally settled.

D. K. RAMA RAO,
Judge.

ORDER OF REFERENCE TO THE FULL BENCH.

There being a difference of opinion between us, on a material point of law, arising out of this reference in regard to the construction of the provisions of the Mysore Income-tax Regulation relating to super tax, we refer the matter in difference to the Full Bench under Section 15 (3) of the Mysore Chief Court Regulation, I of 1884.

C. S. DORASWAMI IYER,
Judge.

D. K. RAMA RAO
Judge.

Monday, the 14th day of December 1925.

PRESENT

Mr. Justice R. B. Plumer, *Chief Judge,*
Mr. Justice C. S. Doraswami Iyer,
and
Mr. Justice D. K. Rama Rao.

This civil referred case coming on for final hearing on the point of law referred to it before the Full Bench on Tuesday, the 1st day of December 1925, and after hearing the arguments of Mr. L. A. Govindaraghava Iyer, Advocate for the assessee Company, and those of Mr. K. Shankarnarayana Rao, Government Advocate, for the Commissioner of Income-tax in Mysore, the Court expressed the following :—

OPINION.

The Chief Judge.—In the matter of a reference to this Court under Section 66 (2) of the Mysore Income-tax, Regulation, V of 1923 there being a difference of opinion between the learned Judges who constituted the Bench for the hearing of the reference the point in difference has been referred to the Full Bench under Section 15 (3) of the Mysore Chief Court Regulation, I of 1884.

The questions referred to this Court under Section 66 (2) of the Mysore Income-tax Regulation, V of 1923 are fully set out in the Judgment of the two learned Judges constituting the Bench. In respect of them, both the learned Judges agree in holding that in computing the "total income" of an assessee for the purpose of assessing and charging either income-tax under Schedule I of the Income-tax Regulation, V of 1923 or additional income-tax otherwise known as "supper tax" under Schedule II of the Regulation the definition of total income as expressed in Section 16 (1) of the Regulation entails the inclusion of income, if any, accruing from such of the assessee's business as may be carried on in British India even though such income has not been received into the Mysore State by the assessee, but whereas Mr. Justice Doraswami Iyer holds that while the expression "total income" for income-tax is the same as the expression "total income" for super tax, from the income *assessable* to income-tax the income earned in British India must be excluded by virtue of Section 10, Clause 4 of the Regulation and as Section 10, Clause 4 is not included among the exceptions specified in Section 58 (1) of the Regulation the provisions of the said Section 10 (4) are as applicable to the assessment of additional income-tax, *i.e.* super tax as to the assessment of income-tax and he holds that as a result the income earned in British India must first be deducted in order to ascertain if the balance is chargeable with super tax by virtue of its exceeding Rs. 50,000: if it does so exceed then the excess over Rs. 50,000 is the amount chargeable to super tax. Mr. Justice Rama Rao, on the other hand holds that as the total income as defined by Section 16 (1) is a mixture of both the Mysore and British India incomes the total income if it exceeds Rs. 50,000 becomes, on the application to it of the provisions of Schedule II, split up into the Rs. 50,000 exempted from super tax and the excess which is liable to it. He would then and only then apply Section 10 (4) and deducting the British India income from the Mysore income he would hold liable to super tax the two incoms in the proportion in which they stand to the total income.

With respect this view is in my opinion fallacious in that it fails to give effect to the main underlying characteristic and intention of the Income-tax Regulation, *viz.*, that only income accruing in or received into Mysore within the meaning of Section 4 (1) of the Regulation or which can be deemed to have accrued in or been received into Mysore within the meaning of Section 42 (1) of the Regulation, shall be chargeable with Mysore Income-tax Regulation, while in the matter of income accruing in British India Section 10 (4) expressly provides that it shall be excluded from liability to be charged, and the express provision is retained in Section 58, Clause 1 which excludes it from the exceptions specified therein, it logically follows as it seems to me that income earned in British India not received into Mysore can no more be used to make Mysore income chargeable to additional income-tax than it could be used to swell the amount of Mysore income chargeable in the first place to income-tax.

To hold otherwise would without any violence to probabilities make an income too small to be even liable to "income-tax" liable to super tax, *i.e.*, additional income-tax, which is an absurdity.

My answer to the reference is therefore that Mysore income not otherwise hargeable to super tax cannot be made liable to it by adding to it income earned nd received in British India. If in order to ascertain the total income the effect f Section 16 (1) is to necessitate taking both incomes into consideration, and I am ot at all to be held to agree that that is its proper interpretation and legal effect, hen to ascertain how much of that total income is chargeable to additional income-ax the amount earned in British India must first be deducted and if the balance, r the Mysore income, exceeds Rs. 50,000 then the excess is the amount and the nly amount chargeable to super tax.

R. B. PLUMER,
Chief Judge.

Mr. Justice C. S. Doraswami Iyer.—I have already stated my views on the points raised, and I have nothing more to add, except to express my concurrence with the conclusions of the learned Chief Judge.

C. S. DORASWAMI IYER,
Judge.

Mr. Justice D. K. Rama Rao.—In view of the opinions expressed by the learned Chief Justice and Doraswami Iyer, J., I have given my most careful consideration and further examined the position taken by me, but with great respect I am unable to come to the conclusion they have arrived at.

So long as Section 16 (1) and Schedule II which is to be read as part of Section 55 remain in the statute as at present worded it seems to me that no other interpretation than the one I have given is possible. We cannot keep Section 16 (1) in the Regulation and at the same time have in Mysore conditions similar to those obtaining under the British Indian Act in which that Section is wanting. If by reason of Section 16 (1) we agree to increase the total income by including in it the British Indian income and to thereby raise the rate for income-tax, as we must do in accordance with Section 3 read with Schedule I, the very same total income under Sections 55 and 56 necessarily brings in the further consequence which cannot be ignored of liability for super tax.

The one other point to which I have now to refer is the suggested procedure to first deduct the British Indian income from the total income before deducting the statutory allowance of Rs. 50,000. That however in my opinion clearly contravenes the express direction in Schedule II read with Section 55, which is mandatory, for Rs. 50,000 is part of the total income and is to be cut out of the total income; if British Indian income is first deducted from the total income what remains is only the Mysore income so that if Rs. 50,000 is to be deducted thereafter from the said balance it will be out of the Mysore income alone and not out of the total income as contemplated in Schedule II. The words "so far as may be" in Section 58 of Chapter IX of the Regulation make it imperative that the provisions of the prior chapters can be made applicable without prejudice to those in Chapter IX and Schedule II relating to the imposition of super tax.

The mere process of calculation to give effect to the principle is of secondary importance and should not be allowed to obscure or be an impediment to the solution of the question; it is immaterial whether the circumstances make that process one of addition or subtraction or rule of proportion. In my opinion no express Section is necessary for resorting to ordinary arithmetic in order to put the principle into operation when it is correct and has to be adopted.

In other respects I have nothing more to add to my earlier judgment and I do not find sufficient grounds to modify or alter the view therein expressed.

D. K. RAMA RAO,
Judge.

With these opinions and the dissenting opinion of Mr. Justice D. K. Rama R. the reference is returned to the referring Bench to answer the questions before it.

Sd. R. B. PLUMER,
Chief Judge

C. S. DORASWAMI IYER,
Judge.

Sd. D. K. RAMA RAO.
Judg

WD 01284—GPB—40,000—17-1-28

General and Revenue Secretariat | 1828 File No. | of 192

19

Serial No.

A

Extract from D.O.No.C.66 dated 22nd Octobe 1926 from the Private Secretary to H.H. the Mahara of Mysore, to the Dewan of Mysore, Bangalore, in the file re Liability of the Mysore Govt. to Indian Income tax under the Govt. Trading Taxation Act.

X X X

Incidentally he gave me to understand that it would have been easier to help the State in incom tax matters if they had been less unyielding on t question of the difference between the State and the British India Acts in relation to the interpretation of the term "total income".

---

2 This question may be separately noted or under the Second Member's orders.

Intld. M.M.I.
22-10-26

3 Draft may be issued and a full note on referred to at A put up.

Intld. M.N.K.
24-10-26.

4 Subd. with a note.

KV
30/10.
Nil-26

NOTE—Contn. Sheet

CIVIL REFERRED CASE No. 9 of 1924-25.

Tuesday, the 19th day of January 1926.

PRESENT

Mr. Justice C. S. Doraswami Iyer,

and

Mr. Justice D. K. Rama Rao.

This civil referred case coming on for final disposal on Monday, the 18th day of January 1926, the Court pronounced the following :—

ORDER.

In accordance with the opinion of the Full Bench, the reference of the Income-tax Commissioner will be answered thus :—

(*a*) In the case of a business carried on partly in British India and partly in Mysore, super tax is chargeable only on the assessable income in Mysore.

(*b*) and (*c*) The cumulative effect is that which is indicated in the judgments of the majority of the Judges of the Full Bench. From the total income as computed in accordance with Section 16 (1), the statutory deduction of Rs. 50,000 has to be made, and on so much of the balance as may represent the actual income derived in Mysore and taxable under Section 58 (1), super tax is leviable.

(*d*) In view of the opinion expressed in the judgments and of the answers given above in regard to questions (*a*), (*b*) and (*c*), this question calls for no specific answer. We make no order as to the costs of this reference.

S. DORASWAMI IYER,
Judge.

D. K. RAMA RAO,
Judge.

Serial No.

5 between the Govt. of India & The H. Govt.
Subd. The differences of opinion in the interpretation of the expression "total income" occurring in Section 16(1) of the I.T. Rules of 1923 arose at first in connection with the assessment made on the Ajmere General Assurance Company on their income in Mysore.

6 The said Company earned an income of Rs 1,664 in Mysore for the year 1922-23 & was assessed to Mysore tax though their income was less than the taxable minimum of Rs 2,400 in Mysore under Section 16(1) of the I.T. Rules under which it is the total income of an assessee that determines his liability to income-tax & also the rate at which tax has to be paid by him.

7 The Govt. of India objected to this & the position of the Mysore Govt. was explained in their letter no. Pol 822/I.T 1-24-6 of 30.3.25.

8 Section 16(1) of the Mysore Income Tax Rules differs materially from Section 16(1) of the British Indian Income Tax Act according to the wording in our Rules, "in computing the total income of an assessee carrying on business partly in British India & partly in Mysore, the profits or gains in British India are to be included" i.e. the all India Income

Q.
I.T 1-24 (5-8)

Q:

NOTE—Contn. Sheet

WD 01264—GPB—40,000—17-12-2
App. F. III—2]

Serial No.

is the total income for purposes of liabil to & computation of the rate of tax.

9 The following is an extract from the Speech of the late 1st member at the time of introducing the I.T. Bill in the Legislative Council.

"The present law is not clear as to the rate at which the income of firms doing business both in British India & Mysore should be taxed. The Bill lays down definitely that while in compu the profits of such a business a deduction should be allowed of the amount of profits accruing from transactions in British India, the total income for purposes of determining the rate should include such profits & that this is the intentio of Govt. is clear this clear.

Copies of the Gazette containing the Speech not readily available & therefore not found up.

His view was not accepted by the Govt. of India & the point was raised in the conference at the Residency between the member, Central Board of Revenue & the Comm'r of Income Tax, Mysore. At the time the member, Central Board of Revenue suggested that the Mysore Govt. should reconsider their interpretation of "total inco & should consider whether the advantage of uniformity of principle & application did not outweigh the financial advantages of the present interpretatio of total income as including income whi

Para 5 of the note on the informal conversations—flag Z

WD 01264—GPB—40,000—17-12-25

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Serial No

has accrued or arisen in British India but has not been received in Mysore.

10 The interpretation of this expression was referred to the Chief Court at the instance of certain companies who have held that "Mysore Income not otherwise chargeable to Super-tax cannot be made liable to it by adding to it the income earned & received in British India" & a copy of the order of the Chief Court was sent to the Residency as desired.

11 The Hon'ble the Resident, in his D.O. no. 2327 S 15.3.26 to the late Dewan Sir Banerji observed that although the judgment of the Chief Court deals primarily with a question of Super-tax yet Mr. Justice Plumer's remarks in the body of the judgment covered the case of "total income" for the purpose of income-tax also & suggested that the Mysore Govt. may undertake legislative action to give effect to the remarks made at the conference in regard to securing uniformity of principle & practice between British India & the Mysore State. In reply the Resident was informed that the majority of judges endorsed the meaning of the term as now held by the Court & that therefore there was no need to undertake any legislation.

12 The Residency again brought

J1
(9.T 55-24)

D.O. no. 19 S/22.3.26
X

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Y

notice in this letter no. 3735 § 26.4.26 the difficulties arising out of the interpretation of the expression in question cited, as an illustration the case of a cycle dealer who has his head-office in the C & M Station & a branch in the city & who was subjected to tax in the latter place tho' his income was below the taxable income in the Mysore State. It was thereupon pointed out that relief from double-taxation in such cases had to be afforded by the British Govt. (Vide letter no. 1137 § 9.6.26).

B

13 While agreeing that the interpretation put upon by the Govt. is in accordance with the decision of the Chief Court, the Residency invited reference again to the suggestion put forward at the conference at the Residency by the members Central Board of Revenue & were again informed that no legislation in the direction suggested was necessary.

9.T. 11-26-1 O

2 U

14 The interpretation put upon the expression by the Govt. is that 'total income' includes income which has accrued or arisen in British India but has not been received in mysore', but the Govt. of India say that the British Indian income should not at all be taken into account as it does not accrue, arise or is received in mysore.

KV 30.10 1.11.26 VK 1.11.26

NOTE— Contn. Sheet

Serial No

15 The note put up above explains the position clearly. one more point has however to be noted This interpretation of 'Total income' to which the Govt. of India is objecting is nothing peculiar to us. for they are adopting it in the Govt of India even without any statutory authority. Hence if an assessee with Head quarters in Br. India does 'Business' in mysore also then the Govt of India not only Tax him on his entire profits including mysore profits at a rate computed on his Total income, but also give him Relief refund to the extent of the mysore Tax and pocket the difference which represents tax on mysore Profits on a very much higher rate than that leviable in mysore.

16 They are however not taking the Total income into account in case of assessees with HQ quarters in mysore & branches in Br. India vide their letter to the Revt Secy d. 30.6.1924 post marked 'A'.

B
5/11

(Printed collection)

P.

2 to 2 Secy

17 Unless the law is changed, the view of the Residency cannot be adopted. The Legislature has advisedly enacted Sec 4 by which the profits earned in Br India shall be included in the computation of total income for the purpose of fixing the liability to pay income tax & for determining the rate at which such tax should be levied

NOTE—Contn. Sheet

WD 01264—GPB—40,000—17-12-2

Serial No

This method has not caused any injustice to the assessee, for he has only to pay I. T. on the actual income earned in Mysore.

The same procedure is practically followed in Br India as shown by the Asst Secy.

Hence there seems to be no good reason to yield to the contention raised by the Resident Member.

18 Has it been calculated what revenue we shall lose if we adopt the Govt View of 'total income'?

(2.11.26

19 Subd. The Commr has been requested in another connection to note the income we are getting by calculating the tax on "total income" as explained in Rule 16(1) of the I.T. Regn.

12/11.

W vide file below

16/11.

20

21 Send a reminder

29.11

22 Subd. Please see linked file.

B As a communication in the matter has issued today to the Commr, no reminder seems necessary. Subd for orders.

29/11/26. Yes - reminder

OFFICE OF THE SECRETARY TO GOVERNMENT
12 NOV. 1926
No. 3270.

× Linked herewith. (2180 H.)

2180 H.

Srs 4/12/26

NOTE—Contd. Sheet

Serial No

Proceedings of the 2nd meeting of the Dewan o Mysore with the Excise Commissioner and Commission of Income-tax held in the Dewan's Chambers on Tuesday the 2nd November 1926 at 2 p.m.

Present.

Amin-ul-Mulk Mirza M. Ismail Esq., C.I.E. O.B.E., Dewan of Mysore.

Rajakarya Prasakta Dewan Bahadur M. N. Krishna Rao, Esq., B...., Second Member of Council.

B. Ramaswamaiya, Esq., B.A., B.L., Excise Commissioner in Mysore and Commissioner of Incometax.

B. Nagappa, Esq., Bar-at-Law, Secretary to Government, Local and Legislative Departments.

The Assistant Secretary to Government, in t Excise and Incometax Departments was also presen

---

Incometax Subjects.

25 (i) Incometax.

Assessment of the surplus profit of the Mad and Southern Mahratta Railway Company and the recovery of tax from its employees in the Mysore State.

The Commissioner should be written to at on to issue the necessary notice. The issue of the notice need not await the decision on the questio raised by the Government of India.

26 (ii) Total Income.

While discussing the other large questions r

NOTE— Contn. Sheet

Serial No

incometax, the Dewan desired to know what exactly is the income we are now getting from the applica tion of our Regulation in regard to "Total Income."

2) The Commissioner of Incometax will, if approved, be addressed about collecting and furnishing this information.

D.T. Section
WW
12/11

28 Subd. (1) The Commr has been written to to instruct that necessary notices may be issued

(ii) Draft Subd.

WW
15/11

29 2) Issue and Submit to dep/pr pers.

Bz
16/11

To. The Commr of Income Tax

Dr. No. 7H 3870 & 19.11.26

Requests him to forward a statement Show the extra income of the Govt. for the past 3 years by the application of Section 16(1) of the D.T. Regn

30 Subd. Reference para 2 supra

WW
19/11

Bz
22/11

From The Same office no. C 312 & 24.11.26

Enquires if the statement should be confined to the extra income derived by the inclusion of the British Indian Income of business carried on both in Mysore & British India in the total income for purposes of the liability to & rate of, tax.

NOTE—Contn. Sheet

WD 01229—GPB—37,500—1-9-26
App. F. III—2j

General and Revenue Secretariat | File No. | of 192

Serial No.

31 Draft Subd.

WW 25/11.

32 For perusal before issue (Init) B.S.R. 27/11.

L-L. Secy)

33 Draft approved (Init) B.N. 27.11.26

34 Issue (Init) B.S.R. 29/11.

1 To. The Commr of I.T no. H 4131 of 29/

informs that his view of wh is required is correct -

35 Reminder put up as directed the linked file.

36 (Fair copy to be signed by the Secretary) Issue HK 7.12.26.

Issued no. H 4490 of 7.12.26.

2 From Mr B. Ramaswamaiya no. C 312 of 16

forwards a statement showing extra income under "Income Tax" by the applica of 16(1) of the I.T. Act -

37 The Commr has given only the extra income derived by the interpretation of the expression ~~of the expression~~ "total incom in Section 16(1) of the I.T. Act" as meaning the all India income for purposes of li to the rate of tax -

38 The extra income is not more

Dy No 1201 : 1826.

Serial No.

& amounts to Rs 13467 for the past 3 years.

3) Reference: 2nd member's minutes of 12.11.26 — para 18 supra —

W 20/12 26 4) If by yielding here we could get substantial benefits in other points of contention we could perhaps yield. B 22/12.

2.2.27 41 Refe para 18 22/12

2nd member. 10

5) The final report of Commr vide last para of his letter — May be awaited

Mutts 23.12.26

23.12.27 B

Secs B. W 31/1

From

The I.T. Commr no. C 312 of 25.1.27 intimates that there is a slight increase in Revenue as reported from the other Dts —

6) Submit with reference to 2nd member's minute supra.

44 The extra income is reported as Rs 13525.40 for the past 3 years.

W 31/1

CP 31.1.27

2nd Member

45 The Commissioner has sent a statement of the increased income-tax due to the inclusion (~~under~~ according to Section 16 (1), in 'total income' of profits or gains in British India on any business carried on both in British India and in Mysore.

OFFICE OF THE SECOND MEMBER OF COUNCIL
22 DEC. 1926
No. 4320.

OFFICE OF THE SECOND MEMBER OF COUNCIL
31 JAN. 1927
No. 5208.

Serial No.

Mysore. This amount is not a large one and judged from it alone, the need for the special provision contained in Section 16 (1) does not appear to be very strong. But Section 16 (1) applies not only to income-tax but also to sup tax and the Commissioner has not reported what is the additional super-tax attributable to th special definition of 'total income' according to our law. This is a point on which informat should be obtained from the Commissioner.

46 Both in regard to increased income-tax a increased super-tax, it is ~~wi~~ well to get the tails of calculation in each case to ascertain how the additional tax has been arrived at.

47 The amount of the present and prospecti increased revenue due to the special provision made in Section 16 (1) is a material factor in deciding our final attitude towards the repeat requests of the Government of India and the Re dency to bring ~~in~~ our definition of "total inco into line with that in the British Indian la It is, therefore, necessary to get full info tion on this point before ~~we~~ we can deal wi the general question further.

48 There is another connected point on wh it is necessary to address the Commissioner refer to the exact manner in which the decis of the Chief Court in Civil Referred Case N of 1924-25 is being applied by the Income-t

Serial No.

Department in regard to assessment of incomes-t super-tax. The exact method of calculation of Mysore super-tax adopted by the Department, following the said decision, may be ascertained with reference to two or three typical cases of incomes for the year 1925-26 which come under assessment in the current year.

FINANCIAL SECRETARY
10 FEB. 1927
No. 338.S.

9.2.27

Sp. 49

Immediate Memo.

10/2.

5

Draft Subd
WW 12/2/27

51

8ws

To.

5 The Comm^r of I.T. No. 71 6587 of 15.2
Requests him to report what the additional Super-tax attributable to the definition of "total income" according to Mys^e law would be.

7474
19.5.27

6 From The same office No. C 312 of 6.4
Forwards two statements giving the required particulars.
Subd. The statement was called for as per orders of the 2nd member
WW 14/3/27

The statements received from the Comm^r of I.T. are submitted for perusal

OFFICE OF THE SECRETARIAT COUNCIL
20 MAY 1927
No. 1980

Serial No.

Statement No. 2 furnished by the Commissio-er shows that the Department is calculating super-tax in the manner contemplated in the judgments of Mr. Justice Plumer and Mr.Justice Doraiswamy Iyer and not in the manner ~~kx~~ laid down in the answer of the Chief Court to the reference made to it. According to the practice adopted by the Department, the statutory deduction of Rs 50,000 is made from the Mysore share of the 'total income' and not from the 'total income' itself. The super-tax levied under this arrangement is naturally less than what it would be if the statutory allowance is made from the 'total income'. Before taking any further action in this case, it is well to calculate, as accurately as possible, (1) the amount leviable as super-tax according to the practice now followed by the Department, and, (2) the amount leviable according to the method given in the answer of the Chief Court to the Commissioner's reference to it.

A comparative statement showing the amounts leviable under the two methods may be put up. Under the second method, the statutory allowance of Rs 50,000 may be made from the total income and this allowance itself considered as consisting of British Indian and Mysore parts in the ratio in which the British Indian and Mysore shares ~~themselves~~ of the total in-

income ~~xx~~ stand. This would mean that from th Mysore share of the total income, the Mysore share of the statutory deduction of Rs 50,000 is made and super-tax calculated on the balance.

A statement in regard to ~~xxx~~ income-tax may also be put up. It may show in juxta-position (1) the tax leviable taking assessability to and rating of tax as determined solely with reference to Mysore income and not total income —— this is the arrangement which the Governof India want us to adopt —— and, (2) the tax leviable on the Mysore share determining assessability and rating of tax with reference to total income including the British Indian share

The statements relating to income and super taxes may be ~~xxxx~~ made complete by including in them all cases of all districts in which this question of 'total income' arises and particulars may be given for three years ending with 1926-27.

What action should be taken on the decision of the Chief Court cannot be ~~decided~~ Settled until we come to some understanding with the Government of India in regard to the adoption of 'total income', as defined in the Regulation, for determining assessability to and rating in respect of both income and super taxes, and als about the manner in which the statutory deducti of Rs 50,000 for purposes of super-tax should be

viewe

Serial No.

viewed in relation to the shares of total income of the two Governments.

The statements required above may be prepared early. The course of action to be taken will have to be decided with reference to the magnitude of the financial interest involved as disclosed by these statements.

Subd. with a statement as her orders

Hon. B. S. Rau Lawrence Hon. Sir Jeremy Raisman Hon. Sir [illegible] and Hon. Appd. if not H. L. Secy).

2nd member)

Supdt. I cannot make out why this is sent to me now. Please enquire & delay submission until 1st member and submit a report for orders. Action thereafter by 2nd member

SECOND CHAMBER
5 AUG. 1927
770 (945)

24397

In reply please refer to No. 421

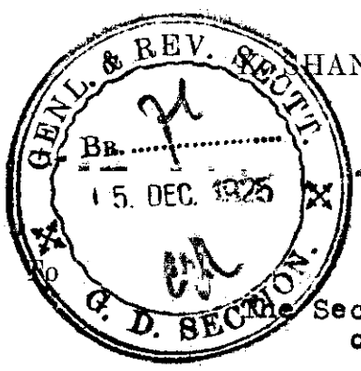
Tel. Address:— "JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE IN MYSORE

Bangalore 14th December 1925.

2278

FROM



SHANKARANARAYANA RAO, ESQ., M.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE

To The Secretary to the Government
of H. H. The Maharaja of Mysore,
Revenue Department, BANGALORE.

SIR,

With reference to your letter No. Fl.3233 dated the December 1925, I have the honour to state that Civil Referred Case No. 9 of 1924-25 on the file of the Chief Court, came on for orders before the Full Bench this day and it was held by a majority of the Bench, that Mysore Income not otherwise chargeable to Supertax, cannot be made liable to it by adding to it the income earned and received in British India. A copy of the Order has been applied for and will be forwarded to Government as soon as the same is received.

2. The case is posted for final orders, (before the referring Bench) to the 21st December 1925.

I have the honor to be,

Sir,

Your most obedient servant,

Government Advocate.

mundiale
and member Hon
L. L. Kher) 15/12/25

G. A. has not chosen to comply with the rules relating to Legal Affairs of Govt. in respect of either taking proper instructions in this important case or keeping the Govt informed of the developments of the case from time to time through L & L Dept according to rules. It is not known either what lines he argued the case. I had prepared a very big Note. G. A. had not taken advantage of the arguments advanced in favour of Govt

2278/3/L

The decision of the C.C. will, I am afraid, result in a great loss of Revenue to Govt.

I have brought the conduct of G.A. to the notice of Govt. mainly with a view to safeguard the interest of Govt. After receiving the copy of the opinion of the Advocate action might be taken.

15/12

15/12

A.

7) (1) I.T.C. has to be instructed accordingly at once

(2) Suitable amendments in Act may have to be prepared in time for next meeting of Legislature.

5538/16/12

Hon'ble Mr. Rama Rao's & Dyer's judgments show what the change exactly is in one section has the Speaker only mentioned in the latter section.

In proposing amendment whether Supreme Court the said proportionately as suggested by Mr Rama Rao, or on further Privy Council decree, has to be noted. Perhaps it might be desirable to adopt Rau's & accept a pro rata basis. Otherwise Mr that case amendment not needed at this stage.

(3) A may be sent for the orders of Dewan & the Members

Dewan

17/12

8) 17/12

Dewan (Hon'ble Mr. Member)

17.12

17.12

9) Before any notice comes to be taken of this matter it will have to be ascertained whether the Act as it stands requires any amendment to bring it in line with the Act of the Privy Council. Such amendment should be submitted for approval

17/12

9/5/25

4

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

10) From
The Govt. Advocate
No. 4918 9.1.25

Forwards a copy of the order of the Full Bench in the case.

11) Subd. The Div: Bench reference is also put up.

KN
12/1

[A copy of the order has to be forwarded to the Residency. As the references have to be answered by the Div: Bench, the ~~final~~ order final orders of the Chief Court may perhaps be awaited]

6240
13/1

12) The full bench decision is subd to 2nd member for perusal before taking any further action

Bz
13/1

2nd member)

13) This decision seems the reverse. The Govt Adv might be asked to send both D Bench orders also 4(2) then a reference might be made to Resr & (31 I.L. Seen. Ins Kin

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

~~Recommended~~ Recommended
Bz

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

Issue up the Quotation & drafting suitable amendment.

The order of the Incharge Dewan & Govt Advocate is also for LL issue

15/1/26 h

14) Ba

LL. issue)

Taken for typing copies as the orders of the Chief are under order for issue forwarding copies to the Residency & returned.

W
23/1

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

6

G.R.S. III—3]

Routine Notes.

.[To be used only for notes, requisitions, etc., not intended for permanent record.]

2818/H 15) Letter no. 536 & 30.1.26 from the Govt. Advocate forwarding copies of the orders passed by the Chief Court in I.T. references made at the instance of the Central India Spinning Weaving & Manufacturing Co Bombay. Etc.

16) Secy: Secy's order on the paper "This may be sent to L.L. Leetle" (Init) B.S.

The previous orders of the Chief Court connected with the cases have been Subd. to the L.L. Secy as directed by the 2nd member.

This will also be Subd. in continuation.

WW 4/2

3/2

BZ 4/2

Rev Secy) 17) L 4/2

L.L. Secy)

Fl 2539. 15/1/25.

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

WD 01264—GPB—40,000—17-12-25

General and Revenue Secretariat

G.T. File No. 137 of 1924

Serial No. 48.

From

18) The Comm[r] of Income Tax
No. 216 B 1.2.26.

Forwards copies of final order of the Chief Court on the references made at the instance of certain Companies re the question of interpretation of the expression "total income" in Section 16(1) of the I.T. Act.

19) Subd. A copy of the decision of the Div: Bench is also put up.

The Comm[r] says that he will follow the decision of the Chief Court — the disposal of similar cases pending with him unless otherwise instructed.

KW 4/2

20) The action to be taken now has to be settled. As the Chief Court has decided otherwise with regard to the definition of 'Total income' the law has to be amended so as to include British Indian Income for purposes of levy of super tax.

21) Incidentally the Question of the 50,000 to be exempted whether in addn to the 50,000 exempted in Br. India we are to exempt 50,000 in Mysore also & giving the assessee the benefit of exemption up to 1,00,000 but the aggregate has also to be decided.

The connected file has been referred to the C.B. in connection with the usual order that the Comm[r] may be given time after his return from tour — (A)

How? k

I do not follow this portion of the note

Please put up the necessary files & also fill up the enactment of 1923

Ref[n]

Serial No.

The three files connected with this reference are not available, as they are before the Secy. to Govt. Hence not put up.

22) All the previous files on the subject are put up.

B
8/2.

Revd seq)

23) I submitted for perusal today. Reply has been sent to the Asst. in initialing the terms of the reference when Clrg. Asst. & the interpretation of Social Income

24) & the L. L. Secy's opinion may be invited as regards the further action to be taken in the circumstances of the case, & prevention loss of revenue to Govt.

2nd member)

h
8/2

25) Papers to 1 and 2.

Re 2 Draft ahead as noted for L. L. Secy's opinion, & on receipt of Govt Advocate's opinion.

Rev
8/2 h
2

L. L. Secy)

6971/8/2/36

Ile with the draft is already sent.

REPLY

(To be written margin.)

9

OFFICE OF THE SECOND MEMBER OF COUNCIL.

NOTE

Dated 13th Septr. *192* 6.

9M.125

1211

26) Please let me know in wh... ... the case relating to the amendment o... ... Income-Tax Regulation for removing t h doubt raised by the Chief Court in regar to the calculation of super-tax now is. Has the amending Bill been drafted and is it not to be introduced at the next session of the Legislative Council ?

OFFICE OF THE SECOND MEMBER OF COUNCIL
16 SEP. 1926
No. 2080.

Revenue Secretary with compliments.

Mck
13/9/26

27) L & L. Secy with compts

For very early reply

13.9.26

28) The file with a note to amend proposed is submitted to

Thro

Thro

8-9
13-9

29) Thro
14.9.26

Serial No.

Y

30) I prepared the note & the amendment in Jan. After the result of the Chief Courts' decision in Royalty case, I wanted to see whether it is not possible to include both the amendments in one Bill.

31) If the Policy of govt is settled in respect of amendment to be proposed in the case of Royalty, both these amendments to be embodied in a Bill & be placed before L. A. & L.C.

32) In compliance with the Hon'ble Sub's Dy, I herewith submit the file with a note & the proposed amend for consideration.

Rev Secy
with Compts

8/9/26.

2080

Govt
14.9.26

33) 2nd member)

There are some preliminary points to be considered before dealing with the question whether any amendment of the law is necessary and if so, what it should be.

34) One of these points is the magnitude of the financial interests involved. What is the increased income-tax and increased super-tax which the special provision contained in Sec-

A

tion

Serial No. A 1

Section 16 (1) enables us to realise? I have suggested in another file today that full information on this point may be obtained from the Commissioner.

36) Another point relates to the decision of the Chief Court in Civil Referred Case No. 9 of 1924-25. It seems to me that there is a divergence between the answer to the Commissioner's reference contained in the Chief Court's order dated 19th January 1926 and the judgments of the majority of the Judges on which it is based. The answer contained in the orders of the Chief Court is as follows:-

36) "From the total income as computed in accordance with Section 16 (1) the statutory deduction of Rs 50,000 has to be made and on so much of the balance as may represent the actual income derived in Mysore and taxable under Section 58 (1), super-tax is leviable.

37) The judgments, however, contemplate a different situation as will be seen from the following extracts:-

Mr. Justice Doraiswami Iyer.-

38) "For determining the income chargeable to super-tax in Mysore, the simple process of excluding the British Indian income from the total income is to be adopted before making the statutory deduction of Rs 50,000 contemplated by Schedule II."

Mr. Justice Plumer.-

39) " ** ** to ascertain how much of that income is chargeable to additional income-tax, the amount earned in British India must first be deducted and if the balance, or the Mysore income, exceeds Rs 50,000, then the excess is the amount and only the amount chargeable to super-tax."

According

WD 01229—GPB—37,500—1-9-26
App. F. III—2]

General and Revenue Secretariat | I.T. File No. of 192

Serial No.

40) According to the answer given by the Chief Court, the statutory deduction should come first, while according to the findings of the two Judges, the deduction under Section 10 (4) should come first. The order in which the two deductions are to be made, is a material factor in the method of calculation and in arriving at the amount on which assessment should be made.

41) The interpretation of the law given by the Chief Court has to be taken as final and binding upon the Income-tax Department, but as pointed out above, there is difference in the views expressed in the judgments and the answer. The point has therefore to be settled as to which of these two views is to be taken as the decision of the Court to be followed by the Income-tax Department. The order of the Court contains the answer to this specific point referred to it and in the normal course, it should be taken as the decision to be followed. But in this case, the judgments on which the answer is based, appear to express a different opinion. According to Section 66 (5), the "Chief Court ** shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send to the Commissioner a copy of such judgment under the seal of the Court and the signature of the Registrar and the Commissioner shall dispose of the case accordingly.

NOTE—Contn. Sheet

WD 01229—GPB—37,500—1-9-26
App. F. III—2]

General and Revenue Secretariat

I.T. File No. of 192

Serial No.

accordingly. ** ** The view expressed in the judgments cannot, therefore, be ignored and reliance placed only on the opinion communicated in the answer. The case, is therefore, one in which, I think, it is necessary to request the Chief Court to tell us whether the statutory deduction of Rs 50,000 should be made first from the "total income" and then the British Indian share of profits or gains under Section 10 (4), or, the British Indian share should be taken off the 'total income' first and then the statutory exemption allowed for.

42) What is exactly the procedure for bringing this point to the notice of the Chief Court is a matter on which the opinion of the L.& L.Secretary is necessary. Whatever is the procedure to be adopted may be communicated to the Commissioner and he may be asked to address the Court and obtain its answer and communicate it to Government so that the course of further action to be taken may be settled.

Mule
9.2.27

A. 43) The order of the Chief Court is final. As such the answer given to (6) + (c) must be literally construed + followed. It must be remembered that the reference was first heard by the Divisional Bench consisting of the Justice Doraiswami Iyer + the Justice Ramarao + that this bench

3660/26
14/211
WD 01223—GPB—37,500—1-9-26
App F. III—2]

General and Revenue Secretariat | File No. | of 192

Serial No.

After ascertaining the views of the majo of judges, the Divisional Bench pronou the order.

44) ~~It~~ This Order of the Bench is to be carried out by the Commissioner und Sec 66 (5).

45) It, therefore, appears to me that the judgment of the chief Court as appears from the ~~to~~ of the Dublin Bench who heard the refere is the one to be followed ~~and~~ the individual views of any one of the Judges who formed the Full Bench, ar no guide for the Commissioner.

46) As regards the interpretation of this order, the rule is to interpret the word in their ordinary literal sense, ~~and~~ the words are to be construed in their ordinary & natural mean [See The Bank of England v. Vagliano. p. 87] The Commissioner may place this ~~his~~ interpretation on this order & apply it to the particular case or cases before h

47) If the party is aggrieved, he may refe the matter to the Ch. Cl.

48) This is the course that suggests it self to me. I cannot think of any other course for the Govt cannot ask the Ch Cl to interpret their own order for us.

7-2-1927 Members

Comm'rs report on the point at A in my note of 9-2-27

NOTE—Contn. Sheet

OFFICE OF THE SECOND MEMBER OF COUNCIL
12 FEB. 1927
No. 5429

FINANCIAL SECRETARY
5 MAR. 1927
No. 4140

Serial No. 50

Subd. The exact method of calculation of Mysore Super-tax adopted by the Deptt following the decision of the Chief court has been indicated in the statements received with the Comm^rs letter no. C 3/2 & 6.4.27 (SL6 in the linked file) -

WW 14/5/27

file G.T 11-26

General and Revenue Secretariat. | File No. of 192 .

Serial No.

51) There are two points to be considered viz., (1) What is the action to be taken on the judgment of the Chief Court in regard to the method of levying the Mysore Super tax on profits or gains of a business carried on partly in Mysore and partly in British India and (2) In view of the attitude of the Gover ment of India in regard to the computation of "total income" as provided for in Section 16 (1) of our Regulation, what steps should be taken to afford relief from double tax to assessee businesses which are now subject to income and super taxes of both Government These are connected points and they may be considered together.

52) As regards point No. (1), the questio to be considered are: Is the decision of the Chief Court to be taken as acceptable and acted upon? If it is to be acted upon, how is effect to be given to it? If the decision is not acceptable, in what way should the law, ~~if any,~~ be amended to bring under the super tax levy profits or gains which should pay this tax?

53) In the first place, I must allude to what appears to me to be a material divergence between the answer to the Commissioner's

3622/1312

NOTE—Contn. sheet.

WD 0324—GPB—60,000—24-5-27

Serial No.

reference contained in the Chief Court's Order dated 19th January 1926 and the judgments of the majority of the Judges on whic it is based. This point is referred to in my note dated 9th February 1927. I requested the Secretary, Law Department to state if there was any procedure to bring this difference to the notice of the Chief Court with a view to find out what is really the decision of the Court and whether in the circumstances of the case the Income Tax Department should follow the procedure indicated in the judgments of Justices Plumer and Doraswami Iyer or in the order based on them. Mr. Nagappa is of opinion that ther is no authorised procedure for making any such reference to the Chief Court and that it is the procedure indicated in the Order of the Court which we should follow. I do not think we can ignore the judgments and adopt the procedure suggested in the Order. It has been ascertained by enquiry that the Income Tax Department has given effect to the method suggested in the judgments and not that in the Order.

54) According to the view expressed in the judgments of the majority of Judges,

Serial No.

though the British Indian share of inc of a business carried on both in Mysore and in British India should be included in "total income", yet it should, for purposes of levy of super tax, be excluded from "total Income" and the tax can be levied only on the Mysore share of "total income"in excess of the statutory allowance of Rs 50,000. It seems to me that this view is not correct as it overlooks the object of computing "total income" and the specific provision of the law that the liability to super tax should be determined with reference to "total income" as provided for in Sections 2 (15), ~~and~~ 16 (1), 56, 58 and Schedule II. I can see no authority in the law to support the view the the allowance on account of the statutory exemption of Rs 50,000 should be made from the Mysore share of the profits or gains alone. This allowance should be made from ~~the~~ "total income" as computed under Section 16 (1), in which must be included the British Indian share of profits or gains.

55) The decision of the Chief Court is perhaps the result of the provisions of the law on this point not being as clear as they might have been. Mr. Justice Doraswami Iyer

NOTE—Contn. sheet.

WD 0824—GPB—60,000—24-5-27

Serial No.

alludes to this point in the following extract from his judgment:-

56 " It is true that the "total income" as defined in our Regulation is, as observed by my learned brother, a homogeneous compound of both the British Indian and Mysore incomes and that in the sum of Rs 50,000 deductible under Schedule II a portion of both these incomes is included but if we are to follow the accepted canons of construction, as I understand them, it is not for us to evolve a scheme for separating the parts of the homogeneous compound and assigning rateable values to fill up the hiatus in the taxing statute."

57 Mr. Justice Doraswami Iyer is of the opinion that there is a hiatus in this respec in the law as it now stands and he has rightl held that it is not the business of the Court to suggest how the gap should be bridged.

58 The inclusion of the British Indian share of profits or gains in "total income" is a special provision of our law which has been deliberately adopted and its object is admittedly to determine liability to tax and rate of tax for the purpose of both income tax and super tax with reference to "total income" including such profits or gains. Granting this, the view held by Justice Rama Rao appears to me to be sound. It has to be conceded that the statutory allowance of Rs 50,000 made with reference to "total income" consists of two parts: the Mysore

NOTE—Contn. sheet.

WD 0324—GPB—60,000—24-5-27

share and the British India share -- and the residue left after this allowance is also made up of the same two shares. The only reasonable view to be taken in such circumstances, in computing the amounts chargeable to the super tax of the two Governments, is to consider that both the statutory allowance of Rs 50,000 and the residue left thereafter consist of Mysore and British Indian parts, standing in the same proportion as the shares of the two Governments in the "total income".

58) For giving effect to the above view, the amendment should, I think, take the form of amplifying Section 10 (4) and clearly specifying how the deduction on account of British Indian profits or gains should be made from "total income" for the purpose of levying income tax and how it should be made for the purpose of levying super tax ~~levy~~.

59) An amendment of the law on the lines indicated above, we could have, in the usual course, undertaken without reference to the Government of India as it relates to a post-Rendition Legislation. But any such amendment is intimately connected with the problem of double income tax and the relief from

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it to be allowed to assessees. Section 10 (4) has been incorporated in our Regulation for implementing the reciprocity agreement with the Government of India and an amendment of this Section, therefore, requires reference to that Government. The Government of India however, have not accepted our view of "total income" and they have been repeatedly urging us to amend our law and bring it into line with the corresponding provision in the Briti Indian Act.

60) The provision in regard to the inclusion in "total income" of profits or gains made by businesses in British India contained in Section 16 (1) is a deliberate departure made in our law and the question to be considered is whether it is desirable to delete it. An attempt was made to calculate what would be the loss involved by such deletion. It has not, however, been possible to obtain full information on this point. As the Chief Court decision required the exclusion of British Indian income before applying th rule relating to the statutory allowance of Rs 50,000, enquiries do not seem to have bee made in many cases for ascertaining "total income" including profits or gains made in

NOTE—Contn. sheet.

WD 0324—GPB—60,000—24-5-27

British India. We have, therefore, no correct data to form an estimate as to what would be the loss ~~xxx~~ of revenue that would occur if the special provision contained in Section 16 (1) is omitted. There are many firms with headquarters in British India which are doing business in Mysore and the inclusion of their British Indian shares of income in their "total income" for purposes of levying super tax in the manner suggested above would bring us a fairly large amount and we cannot afford to forego this revenue.

(61) I think it is desirable to make a further reference to the Government of India and try to convince them of the reasonableness of our contention, and cite in support of it the following arguments:-

(62) (1) After all, the inclusion on which we insist is only for purposes of determining the ability of an assessee to pay income and super taxes, and it can not be denied that ability to pay is shown by his "total income".

(63) (2) "Total income" on which liability to tax and rate of tax are determined by either Government includes even now the

WD 0324—GPB—60,000—24-5-27

Serial No.

income made under the other Government when the headquarters of the assessee concerned are under the jurisdiction of the former. It is doubtful if in all cases of the kind the place of the headquarters of a business should be the criterion ø for this purpose. There may be cases in which Branches are as important as Head Offices and in such cases it is not reasonable that only the Government in whose jurisdiction headquarters are located should claim to include in "total income" the profits or gains made under the other Government. It is not unreasonable to concede that, in such circumstances, both Governments might determine the assessee's ability to pay with reference to his "total income" though each Government might agree to forego the tax calculated on the share of income made under the other

64) (3) The rates of Mysore taxes are lower than those of the Government of India and the latter now obtain the advantage of the difference in rates in all cases in which they include the Mysore income in "total income", impose their rates of taxes on "total income" and allow refunds only

NOTE—Contn. sheet.

WD 0324—GPB—60,000—24-5-27

Serial No.

to the extent of the lower rates of tax paid by assessees to Mysore. If we raise in such cases our rates of taxes to the level of those in British India, our revenues would benefit and the refunds to be allowed by the Government of India would be larger. Instead of an arrangement of this kind, the Government of India may agree to permit the determination of liability to tax and rate of tax in Mysore, on "total income" including the British Indian share of profits or gains and allow refunds to assessees accordingly.

(65) (4) Clause 9 of Bill No.45 of 1926 / Amdt to amend the Indian I.T. Act 19 / provides that for purposes of section 48 "total income' includes, in the case of any person not resident in British India, all income, profits and gains wherever arising, accruing or received, which, if arising, accruing or received in British India, would be included in the computation of 'total income' under Section 16." It will be seen from this contemplated amendment that the Government of India propose to amplify ~~their~~ their Section 16 for a similar purpose. Their object is to determine the rate of tax of a non resident assessee with reference to all items of his "total income" wherever

NOTE—Contn. sheet.

WD 0324—GPB—60,000—24-8-27

Serial No.

derived so that his claims to refund may be reduced as much as possible. The purpose for which special provision is made in Section 16 (1) of our Regulation is that the profits or gains of a non-resident assessee ~~made~~ business in British India might be included in "total income" so that his liability to tax and the rate of tax to be paid by him might be determined not with reference to ~~his~~ its income in Mysore alone but with reference to ~~his~~ its "total income" including that made in British India. Whether refunds are reduced or rates of taxes are raised, improvement of revenue is the object of either measure secured by including all the items of income in "total income" In view of the proposed amendment of Section 16 of the Government of India Act, the similar provision contained in Section 16 of our Regulation cannot be considered as unreasonable.

66 (5) There are Income Tax laws which go farther than we have done in this reppect. An extract rrom the Supplement to the Accountant dated 5th March 1927 is placed below and it will be seen from it that the Government of Spain proposes to tax all incomes from whatever source or from whatever quarter

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NOTE—Contn. sheet.

WD 0324—GPB—60,000—24-5-27

General and Revenue Secretariat. | File No. of 192 .

Serial No.

derived, and whether they have been remitte to Spain or not. We have not gone so far as that. All that our law provides is tha in the computation of the "total incomes" of businesses partly transacted in Mysore and partly in British India, their British shares of income might be included ~~in "Tota income"~~ not for paying tax on them but for determining the liability to tax and the rate o tax.

DEWAN'S OFFICE.
14 SEP. 1927
Reg. No. 1921

67) If the Government of India can be persuaded to agree in the view expressed above we can take action for amending our law on the lines suggested and assessees doing business both in Mysore and British India will be freed from the hardship of double taxation.

12.9.27

Dewan)

68) Sri Chakravarti Doddambi may be unofficially consulted.

8328 1/12/27.

30-11-27

SECRETARIAT
2 DEC. 1927
No. 3224

69) 2nd. meeting for perusal of Dewan's notes

1/12

2/12/27

F. & H.W.Co. 61-27

NOTE—Contn. sheet

+ A printed copy of the Const order is placed in the file.

To Private Secretary to H. H. with Compliments.

2/12/27

WD 0324—GPB—60,000—24-5-27

General and Revenue Secretariat. | File No. R° 3161-8/8.12.2 of 192

Serial No.

71) Returned with compliments.

FINANCIAL OFFICE
9 DEC. 1927
Mu.

This case illustrates the time-honoured conflict between the claims of residence and the claims of origin, regarding which no two authorities can agree.

72) The English law, and apparently the Spanish, are based on the claims of residence, that is to say, the resident in the country is taxed on all his income from whatever source. The British Indian law, and in the main that in force in Mysore, are based on the claims of origin, that is to say, the tax is imposed on the income accruing or received in the country whether to a resident or to a non-resident.

73) In respect of business incomes, British India has the advantage over Mysore because (a) more men of the businesses that are common to both countries have their headquarters and therefore receive their total income in British India than in Mysore, and (b) the British Indian rate of tax being higher than the Mysore rate, the portions of these incomes that accrue in Mysore are taxed in any case at a rate higher than the Mysore rate, from which the Mysore Government gain no advantage.

74) In the case of income tax, these inequalities are met in a small measure under a majority ruling of the Chief Court under which a business conducted in both places. if it only makes one rupee in Mysore, is taxable in Mysore on that sum at the pplicable to the total income, although it is

NOTE—Contn. sheet

0324—GPB—60,000—21-5-27

Serial No.

also legally taxable in British India since the rupee is received there.

75) It has now been sought to secure a similar ruling in the case of super tax, to the effect that the rate is determined by the total income in both countries and that the deduction of Rs. 50,000 is to be made only once from the total income and not separately from the income derived in Mysore. A majority of the Chief Court have held against this view.

76) I have not been able to trace the origin of sections 10 (4) and 16(1), but I venture to think that the view pressed on behalf of the Mysore Government in both cases, however equitable it may appear in practice, is contrary to the whole framework of the Act, which was based on the old British Indian Acts, the basis of which was origin and origin alone, vide, for instance, para 191 of the Report of the Indian Taxation Committee.

77) Nor does the analogy of the proposal to amend section 48 of the British Indian Act help matters. This is based on para 240 of the Indian Taxation Committee's report, which raises a question of pure expediency, and proposes the borrowing of a provision from the English law, which is based on the opposite principle. What is proposed is simply this - that, whereas the dividends of companies are taxed at the maximum rate and residents in British India are taxable on a graduated scale and so entitled to recover part of the tax paid for them by companies on their dividends, there is no need to give a similar refund to a non-resident

NOTE—Contn. sheet

WD 0324—GPB—60,000—24-5-27

Serial No.

who has a large income outside India.

78) It would seem to be very difficult to make a coherent and logical amendment of the Regulation which would provide for these two comparatively minor departures from the principle of origin, while retaining the principle intact in all other respects. The question has been raised in the case of incomes from business only. A wealthy vakil may practice in both Madras and Bangalore, but his rate of Mysore income tax and his liability to super tax are determined by his Mysore income only, and there is no proposal to alter this. Nor is it proposed to extend the enquiry into outside income to any areas except British India. In the case of a firm trading in Mysore and Hyderabad, there would be no question of the income accruing in Hyderabad being taken into account.

79) Moreover, even if a section corresponding to section 16(1) were added to Chapter IX, there would remain many phrases in the Regulation which it would be very difficult to reconcile with these two sections. Thus, for instance, -

80) Section 2(15) defines "total income" as total amount of income, profits and gains from all sources to which this Regulation applies computed in the manner laid down in Section 16.

81) Section 4 says, save as hereinafter provided, the Regulation shall apply to all income, profits or gains, as described or computed in Section 6, from whatever source derived, accruing or arising or received in Mysore.

NOTE—Contn. sheet.

WD 0324—GPB—60,000—24-5-27

General and Revenue Secretariat. | File No. of 192

Serial No.

82) Section 10(4) expressly limits the calculation of the profits or gains of a business carried on both in Mysore and in British India to the portion attributable to the transactions in Mysore. Section 56, which governs both Section 55 and Schedule II, says that the total income for purposes of super tax shall be the total income as assessed for purposes of income tax, which ~~seems to~~ is quite a different thing from the total amount of income, profits and gains from all sources to which this Regulation applies. (Section 2(15))

83) Section 58 confirms this by applying the bulk of the Regulation, including section 10(4), to the charge and assessment of super tax.

84) In these circumstances it would seem to be better to recognize frankly that amendment of the Act with the object of confirming the arguments advanced in the courts would be apt only to increase the existing confusion, and to attack the real root of the trouble, which lies in the fact that the majority of the people who are taxable both in Mysore and in British India receive the whole of their incomes in British India and in the higher rates of tax levied by the British Government.

85) The following is suggested as a direct method of tackling these difficulties:- to agree with the the British Government that they alone shall assess all persons liable to taxation both in British India and Mysore, and shall ~~decide~~ divide the taxation levied by them in proportion as it accrues in the two countries, respectively; and to pass a short

NOTE—Contn. sheet.

WD 0324—GPB—60,000—24-5-27

HIS HIGHNESS THE MAHARAJA'S PRIVATE SECRETARIAT.

Notes.

6) Regulation legalizing such assessment. Under this arrangement (a) the business man would pay no more than he does now, (b) the other assessees who derive inco in both places would be put on par with the business man, (c) the Mysore Govern ent would secure all that it is now co ending for plus the advantage of the igher British rate (which is levied a the business assessee in any case), (d) the British Government would secure the advantage of a higher rate of tax on assessees other than business men. A minor result would be that Mysore capi invested in British India would tend t be transferred to Mysore.

Private Secretary
to H.H. the Maharaja of Mysore
8th December 1927.

OFFICE OF THE SECRETARY TO GOVT.
9 DEC. 1927
No. 3196

87) To the Financial Secretary to the Government of H.H. the Maharaja of Mysore.

88) 2nd minute

89) We may obtain the views of the Comm^r of Income Tax.

10-12-27

OFFICE OF THE COMMISSIONER OF INCOME TAX IN MYSORE
Recd. DEC 12 1927
No. C 315/27-28
Enclosures. if any

12-12-27

90) To the Comm^r of I. T. with Compliments

D 2823—GPB—500—12-6-17

32

General and Revenue Secretariat. | File No. of 192

Serial No.

No. D.L. Dis. 94 /28-29. Dated 19th Dec. 1928.
Rev 39.

FINANCIAL
20 DEC 1928

91) The question at issue in this file is to ascertain what steps should be taken to secure to the Government of Mysore a share in the Super-tax on businesses carried on partly in Mysore and partly in British India, on the basis of all-India total income of the assessees concerned.

92) 2. This question has come up for solution - as the result of the majority ruling of the Chief Court that Super-tax should be levied only on the income in Mysore in excess of Rs 50,000/-. This decision cuts at the root of the intention with - which the section regarding the total income was included in the Regulation of 1923. The question has been very fully discussed in the file and I wish to confine myself to the broad points arising out of the discussion.

93) 3. The lines of action suggested in the file fall into two classes:-

(1) The amendment of section 10(4) of the Regulation clearly specifying how the deduction on account of British Indian income should be made from the total income as defined in section 16(1) for the purposes of levying income-tax and levying super-tax respectively.

(2) To make arrangements with the British - Government that they alone shall assess all persons liable to taxation both in British India and Mysore and that the taxation so levied by them shall be - divided between the two Governments - in proportion as it accrues in the two countries respectively.

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4. As regards the first point, the difficulties of amending the Regulation for this purpose have been fully dealt with in Sir Charles Todhunter's note. Apart from that, it is clear that the Government of India will not agree to any such amendment which not merely ignores their oft repeated request for the deletion of that portion of section 16(1) which permits taking into consideration the British Indian Income for determining the rate and liability to income-tax in Mysore, bu would go a step further in the same direction and include super-tax also in its scope. On a careful consideration of all the circumstances, I would respectfully suggest that the idea of amending the Regulation may be held over for the present.

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5. The suggestion made by Sir Charles Todhunte is no doubt one that will remove many of the difficulties experienced in the matter, but it involves a voluntary renunciation of the undoubted right of Mysore Government to tax all incomes accruing in the State. The number of cases affected by the Chief Court ruling and the revenue involved are probably inconsiderable; and it is not desirable to part with the power to tax incomes arising in Mysore and vest it in an outside agency. Even if an agreement could be arrived at, the everyday working of such an agreement will be a source of constant

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constant friction. I would, therefore, with all due respect, venture to state that the suggestion is not practicable at present.

96) 6. I quite realise that the net result of my views would be to leave the question very much where it was. But in view of the uncompromising attitude of the Government of India in the matter it seems better to drop the question for the time being.

Mr KV

J.P. Rajagopal

Commissioner of Income-tax

in Mysore.

To- The Financial Secretary,
with compliments.

This question was discussed at the monthly meeting with the Comm^r held on 26th Jany 1928 & the decision arrived at was that it might lie over. (Vide flag M in the linked file).

1st member) 7.1.29 MV

Fl. Secy) MV 22/1

MV 22/1

Mule 9.1.29

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